ABSTRACT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 172.

CHARLES WADE, PLAINTIFF IN ERROR,

vs.

R. W. LAWDER AND ROSA RINGO, ADMINISTRATORS OF BIRT RINGO, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

RECORD FILED SEPTEMBER 22, 1894.
ABSTRACT FILED DECEMBER 18, 1894.

(15,688.)

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INDEX.

	Original.	Print.
Proof of service of abstract of record, &c.	*a*	1
Designation of parts of record to be printed in addition to abstract.	*c*	1
Notice of errors relied upon	1	1
Abstract of record	7	5
Proceedings in circuit court of Audrain county	7	5
Amended petition	8	5
Answer	21	13
Replication	25	16
Evidence	26	16
Testimony of Charles Wade	26	16
Gus Weber	61½	34
Birt Ringo	62	37
Wm. D. Snyder	97½	55
J. C. Buckner	98	56
Mrs. J. C. Ringo	102	60
Exhibit A—Letter, Wade to Berkey & Gay, July 20, 1891	106	62
B—Letter, Berkey & Gay Furniture Company to Wade, July 22, 1891	107	63

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 15, 1896.

	Original.	Print.
Patent and certificate	111	64
Assignment before patent	117	67
Drawing of patent	118	68
Drawing of patent	119	68
Photograph of bed	120	68
Certificate of no other application introduced	121	68
Opinion of trial court	122	68
Objection to same	129	73
Judgment of trial court	130	73
Motions filed	130	73
Motion in arrest of judgment	130	74
Motion for new trial	131	74
Motions overruled and exceptions	132	75
Application for appeal	132	75
Order granting appeal	133	75
Filing of bill of exceptions	133	76
Extract from plaintiff's brief in supreme court of Missouri	133½	76
Submission	134	77
Judgment	134	77
Statement	135	78
Opinion	135	78
Motions filed	136	78
Motion for rehearing	136	78
Motion for transfer	138	80
Order overruling motions	139	80
Record of filing writ of error, &c	139	80
Record of filing assignment of errors, &c	139	80
Bond	140	81
Writ of error	142	82
Citation and service	143	83
Assignment of errors	145	84

a In Supreme Court of the United States, *ss.*

CHARLES WADE, Plaintiff in Error,
vs.
R. W. LAWDER, Administrator, & ROSA RINGO, Administratrix, of the Estate of Birt Ringo, Def'ts in Error.

STATE OF MISSOURI, *Audrain County,* } *ss:*

I, the undersigned, hereby certify on oath that I served the annexed letter to Hon. James H. McKenney, the annexed notice of errors, points, claims, and waivers, also the annexed extracts, papers, and abstract in said cause, by delivering a true copy of same personally unto the said R. W. Lawder, also a like copy of all of same unto the said Rosa Ringo, all done in Audrain county, Missouri, on the 14th day of December, A. D. 1894.

A. P. JOHNSON, *Constable,*
By W. O. JOHNSON,
Deputy Constable of Salt River Township, said County.

b I, Benj. C. Johnson, the undersigned, hereby certify that the foregoing proof of service was subscribed and sworn to by said W. O. Johnson before me on this 14th day of December, 1894, at my office, in said county.

Witness my hand and seal of office.

[Seal of Audrain Circuit Court, Missouri.]

BEN. C. JOHNSON,
Clerk Cir. Ct., Audrain County.

Fees of constable, $1.00, paid by J. M. Barker, att'y for pl't'f.
W. O. JOHNSON, *Dep.*

c MEXICO, MO., *Dec.* —, 1894.

Hon. James H. McKenney, clerk Sup. Court U. S.

DEAR SIR: In addition to record, papers, evidence, and other matters hereto attached relating to the record of the case of C. Wade, pl'ff in error, against the administrators of the estate of B. Ringo, you will please have printed and inserted also the following-named parts of the record in your hands filed by said plaintiff, to wit:

Patent and certificate	Record, pages		299 to 305
Assignment before patent	"	"	291, 292 (or 306)
Drawings of patent	"	"	687, 688
Photograph of bed	"	"	689
Certificate of no other application	"	"	307
Opinion of the trial court	"	"	656 to 665
Objection to same	"	"	665

Judgment of court	Record, pages		665 (or 365)
Motions filed	"	"	665 (or 365)
Motion in arrest	"	"	666
" for new trial	"	"	667
Overruling & exceptions	"	"	667
Application for appeal	"	"	667, 668
Order granting same	"	"	669
Filing bill	"	"	669
Mo. sup. court record	"	"	670
Submission	"	"	670
d Sup. court statement	Record, pages		671
" judgment	"	"	671

(Please omit a repetition of the opinion, but print the remarks of the Mo. sup. court, Record, page 680.)

Motion for rehearing and transfer	681
Copy of motions	683
Notice to diverse att'ys	683
Order overruling said motions	684
Record of filing writ of error to Mo. sup. court	684
Writ allowed by Mr. Justice Harlan	684
Copy of writ of error, Pages	1 to 3
Citation to Ringo	3
Service of same	3
Filing assignment of errors	684
Bond	685, 686
Certificate to same	686
Copy of assignment of errors	4 to 8 & 9

Yours truly,

CHARLES WADE,
Plaintiff in Error.

Attest:
JOHN M. BARKER,
SAM. W. BICKLEY,
Of Counsel.

1 In Supreme Court of the United States.

CHARLES WADE, Pl'ff in Error,
v.
R. W. LAWDER, Administrator, & ROSA RINGO, Administratrix, of the Est. of Birt Ringo, Def'ts in Error.

To the above-named defendants in error:

Take notice that the undersigned, pl'ff in error, intends to rely upon the errors below specified and upon such parts of the record in said cause as are below set out, specified, and hereto attached and as below waived and admitted and as called for in the annexed letter to the clerk, to wit:

Errors Relied Upon.

1st.

The supreme court of Missouri and the circuit court committed error in rendering judgment for the defendant in error instead of for the plaintiff in error, for whom the same should have been rendered.

2nd.

The verdict, judgment, and opinion of said — is against the law, the equity, and the facts found to be true by the courts and admitted by the defendant—

2 *a.* In that in the pleading in this cause it appears that the defendant was bound in his contract in evidence to sell and transfer to plaintiff a half interest in the invention then known as the Ringo folding bed, together with a good and lawful patent sufficient for its protection and with sufficient specifications for its future manufacture, in accordance with the provisions of section 4888 of the Revised Statutes of the United States and other sections of said statutes; also three beds in Quincy, Illinois, and that said beds and invention so patented were to be of sufficient value and utility to constitute a consideration for the transfer of plaintiff's property in said contract specified, and that the defendant failed to comply with each and all of said conditions.

b. That, while the courts, in their opinions, apparently found that the coil-spring-bed invention was the one bought by plaintiff, they erroneously found that the coil-spring bed brought into court by the defendant was a sufficient consideration for plaintiff's $7,000.00 stock of goods, for the reason that said bed while being operated is

3 inclined to raise up in front, so that a space appears between the castors under the front part of the bed frame and the floor, which is caused by the great tension of the springs and the consequent pressure of the rollers upon the track; and, further, that the pressure of said rollers on said tracks is so great in operating the bed that in order to change its use from summer to winter with increased bed clothing for winter it is necessary that the front end of the tracks be lowered by morticing down into the front cross-beam, with other changes involving a rebuilding of the bed, and thus unfitting it for further summer use except by rebuilding it again.

c. The courts erred in holding that said coil-spring invention, together with the patent tendered in evidence, was a sufficient and complete fulfillment by defendant of the contract, for the reason that said coil-spring bed has no patent to protect it, a patent being refused thereon, and because the patent in evidence does not protect or cover it, and because the said patent is without utility, insufficient, and void, and because said patent covers, if anything, a double-slotted moveable hinge upon each side instead of the single fixed hinge, as in the bed sold to plaintiff, and because the patent tendered

covers an entirely different combination in every respect from one sold to plaintiff.

d. That the question of the validity, utility, and value of the letters patent in evidence is a mingled question of law and fact
4 and is based mostly, if not entirely, upon the sufficiency of the application and specifications, together with the drawings and papers connected with the patent.

e. That no application for any patent upon the coil-spring bed as brought into court was ever made in the Patent Office, at Washington, although it is hereby admitted that B. Ringo and J. C. Buckner testified to the effect that such an application had been made, and that Ringo swore at the trial it was still pending, and at the close of the evidence he offered to prove that it had been refused by the Patent Office because the second was covered by the first, as he stated it, and the sole reasons for so asserting are that the defendant in error did not produce an- written evidence of said application, and because of the certificate to the contrary in evidence from the said Patent Office.

3rd.

a. The plaintiff in error abandons the claim of unsound mind.

b. Admits that the following-named witnesses of defendant in error, to wit, Birt Ringo, the defendant; J. C. Buckner, a
5 part owner; D. C. Wright, a cabinet workman; C. D. Rodgers, county surveyor; H. T. Brooks, John Ulmpstead, A. G. Turner, E. M. Hughes, W. J. Botts, S. P. Emmons, John A. Judy, Henry Meyer, and Mrs. J. C. Ringo, all testified that they saw the Ringo folding bed, at J. C. Ringo's house, work nicely, as they thought, and they saw no disposition of it to tip over.

c. That the above-named bed will not operate as well as the one brought into court by defendant, as testified to by him, but that the bed brought into court by defendant would and did operate without tipping or falling over, but that it was because of its great weight in the rear or upright part and comparative lightness in the front or folding part.

d. That the bed brought into court by plaintiff in error was one rejected by defendant and rebuilt by plaintiff.

e. Admits, further, that plaintiff never at any time made any kind of tender to defendant or offer to rescind the contract, except the offers contained in the petition; and, further, admits that the defendant in error offered and tendered to plaintiff in error the patent in evidence after the suit was brought.

6 *f.* Admits, further, that plaintiff Wade had full and ample opportunity and did examine all the beds made and operated by Ringo before and at the trial, and that Ringo explained to him all his said supposed inventions, and that Wade believed and stated repeatedly to other parties that the bed bought by him from Ringo was a great and valuable invention, so valuable, as he believed, that no one in Mexico had sufficient money to buy the same from him, but that he, said Wade, was mistaken in that regard.

4th.

Plaintiff in error claims, further, that the Supreme Court of the United States ought to reverse the judgment of the lower courts and restore to him his property and give all proper relief.

CHARLES WADE,
Plaintiff in Error.

Attest:
JOHN M. BARKER &
SAM. W. BICKLEY,
Of Counsel.

7 STATE OF MISSOURI, *sct:*

Be it remembered that heretofore, to wit, on the 14th day of Sept., 1892, there was filed in the clerk's office of the supreme court of the State of Missouri a transcript in a certain cause, wherein Charles Wade was appellant and Birt Ringo was respondent; which said transcript was in words and figures as follows, to wit:

COUNTY OF AUDRAIN:

Pleas before the circuit court of Audrain county, Mo., at a term begun and holden in the city of Mexico, county and State aforesaid, on the first Monday in October, 1891, before Hon. E. M. Hughes, judge of the 3rd judicial circuit of the State of Mo.

CHARLES WADE, Plaintiff,
vs.
BIRT RINGO, Defendant.

Be it remembered that heretofore, to wit, on the 17th day of Sept., A. D. 1891, a petition was filed in the above-entitled cause in the office of the clerk of the circuit court in and for the Co. of Audrain in words and figures as follows:

8 STATE OF MISSOURI, *County of Audrain,* } *ss:*

In the Circuit Court of Audrain County.

CHARLES WADE, Plaintiff,
vs.
BIRT RINGO, Defendant.

Bill in Equity to Rescind a Contract, Restore Property, Appointment of a Receiver, for Injunction, and Other Relief.

9 And now comes the plaintiff, and by leave of court, for his amended petition says that he in the month of July, 1891, was engaged in the retail furniture business in the city of Mexico, said county, and owned and possessed a large stock of furniture, coffins, two hearses, one furniture wagon, three sets

harness, four mitre machines, a lot of moulding, a lot of tools and many other articles of property; a particular description whereof plaintiff could not at the time of filing his first petition herein give for the reason that he had no invoice or account, and the same was beyond his control and in defendant's possession (except a part thereof to wit: about one thousand dollars' worth which said defendant had disposed of) and that said stock of goods was then and still is, mostly, in the store building No. 11, on South Jefferson St., in said town of Mexico, and the whole of said property, with what has been disposed of by said Ringo, was and is worth about seven thousand dollars, all which was the fruits of a long time of active labor, expense and cost to the plaintiff.

That since this suit was brought an invoice of said goods has been taken and is now on file in this court and plaintiff refers thereto as a true account thereof. At which time there was and still is in common use certain valuable inventions in folding beds such as is known as the Windsor folding bed, the Andrews folding bed, which folding beds are operated with weights at the bottom and back end of the bed frame, made to move in an upright frame, which bed frames work on a pivot or axle arrangement and *is* so constructed and managed that said iron weight (200 pounds to 600 pounds in each bed) owing to size will balance and equalize the weight of the folding part of such bed frame with mattresses complete, bed spring, bed clothing, front glass, embellishments, furnishings, and all the bed clothing, pillows, &c., usual and customary, and which in cold weather usually consists in springs, one mattress, two sheets, two pillows, two blankets and one or more comforts, and all weighing about 100 pounds.

Plaintiff says that at the time first aforesaid the defend-
10 ant claimed to be the owner of an undivided half interest of and in a valuable invention which he designated as the Ringo folding bed; that he then called upon the plaintiff and expressed a desire to sell the same to plaintiff; that thereupon the plaintiff entered into negotiations with defendant with the view of purchasing from him his said interest in said pretended valuable invention; that in said negotiations the defendant, for the fraudulent purpose of inducing the plaintiff to buy of him his interest in said pretended invention, represented to the plaintiff that his said Ringo folding bed was and is constructed and supposed to be constructed as to its general and main parts like the said Windsor folding bed, to stand up like a clothes press when not in use, with a movable front constituting the bedstead, secured in an outside framework and about of the same size as the folding beds aforesaid, operated with weights, about six feet eight inches high, four feet broad and about twenty-five to twenty-seven inches deep from front to rear at the base, which said Ringo folding bed was designed, as so represented by him, to entirely dispense with said weights, and instead thereof (for the purpose of counteracting and balancing the weight of the folding part of said bedstead, bed springs, mattress, bedding, comforts, blankets, &c., usually used, together with a looking glass of any size desired) two spiral or coiled springs are to be used; the upper end

of each of said springs fastened into a cross-beam, and the lower end of each of said springs so connected with the back and rear end of an iron circular track, that rollers secured to the bottom end of the folding part of said bed may in unfolding and letting down of the bed roll backward on the top side of said tracks (which are circular on the top side) and as they roll back are designed to increase the tension on said spiral springs so as to cause the increasing leverage and weight of the bed in being unfolded and let down to be equalized by the power of said springs and also to have legs about one foot long to hold up the end of the bed when let down, the
11 whole object and supposed purpose of said supposed improvement being to reduce the weight of the folding bed so that it may be easily moved about upon four roller castors, by the housekeeper with safety, decrease the cost of construction, and lessen the cost and expenses of shipment and thus produce a market for the sale of said Ringo folding bed, so as to in a large measure take the place of other folding beds in common use, and become a source of profit to the owner thereof.

Defendant further represented that he had applied for a patent for his pretended invention in the Patent Office of the United States, and that his application therefor was still pending and undetermined. That plaintiff is not able to make any more, further or better description of said Ringo folding bed than appears herein because no specifications thereof have been furnished him, but that the same in substance is set out in this petition.

Plaintiff further says that the defendant so intending to wrong, cheat and defraud the plaintiff out of his said stock of goods and property, knowingly, fraudulently and deceitfully represented to plaintiff that the said pretended invention was such an improvement on such other folding beds in common use that all said weights used in them for balancing and overcoming the necessary leverage power (of the bed in letting down and closing up) could and would be dispensed with by the use of his springs, tracks and rollers, and that said springs, tracks and rollers would completely and fully do and perform all necessary work and supply the place of such weight above named, in counteracting the weight and leverage of the bed and furnishings above named as necessary and usual, while being let down and unfolded for use and in being folded up when not in use, and that said bed should and would be built of substantially the same kind, quality and dimensions of lumber and material as used in said other folding beds, and further represented that the "down pull" of his said springs would equal the "down pull" of the folding part of said bed when being opened for use, and further so represented that
12 his said bed would not, when being so opened, tip or fall over, (which statement defendant did not know to be true, and in fact was not true) and might with perfect safety have any amount of weights added upon the bed part, even to the extent of one thousand pounds, and that it would not fall or tip over in use because, as he falsely and fraudulently stated, that the "down pull" of his said springs in the rear would still counteract and overcome

the "down pull" of the bed and weights in the front so it could not fall over; all which representations were false and known by defendant to be false at the time, and which in truth and in fact the defendant well knew at the time, that when said Ringo folding bed should be made of the same size and material of other beds with his springs, rollers and tracks and without weights, that it would not and could not operate the ordinary weight of the front with any kind of beds and bedding thereon, nor would it operate with as much weight as any ordinary bed must carry necessarily, and when so built of the ordinary weight and dimensions that it would fall and tip over in operation with or without any bed furnishings upon it, and further, that it was a dangerous and worthless deadfall and could not be safely used as a bed.

The plaintiff further says, that believing and trusting in said false and fraudulent representations of defendant, he was thereby induced to enter into a written contract for the exchange of the plaintiff's said property for the said supposed invention of defendant and his beds, &c., on hand, of which written contract the following is a copy:

"Whereas, B. Ringo, of Mexico, Mo., has invented a new folding bed known as the Ringo folding bed for which he has made application for a patent from the United States of America in his name, and whereas, B. Ringo owns an undivided one-half interest of and in said patent with one J. C. Buckner, of Mexico, Mo. Now be it known that the undersigned, B. Ringo, has this day sold and
13 does hereby sell and assign to C. Wade, of Mexico, Mo., all of his said undivided one-half interest in said invention and the letters patent applied for and to be issued to said B. Ringo for and to said Ringo folding bed. And said B. Ringo obligates himself to assign his undivided one-half interest in said letters patent to said C. Wade as soon as the same are issued by and at the Patent Office of the United States, in such manner as any additional assignment of the same may be necessary other than this writing to convey to said C. Wade an undivided one-half interest in said invention and letters patent. And the said B. Ringo does hereby further sell and assign to C. Wade my undivided one-half interest in all patterns and all of said Ringo folding beds completed or being constructed at J. H. Heitland's in Quincy, Illinois. For and in consideration of the sale and transfer of the above undivided one-half interest in said invention and letters patent, said C. Wade does hereby sell, transfer and deliver to said B. Ringo his entire stock of furniture, coffins, fixtures, one furniture wagon, two hearses and three sets of harness with said wagon and hearses, said stock of furniture being the same now in the building occupied by said C. Wade on Jefferson street, in Mexico, Mo., which stock of furniture, fixtures, coffins, wagon and harness, &c., is this day delivered by said C. Wade to said B. Ringo.

Said B. Ringo further obligates himself to assign, transfer, for no other or further consideration than herein named, any further patent or improvement on said Ringo folding bed or other folding bed that he may obtain letters patent for at any time in the future.

If said letters patent on this application or other different application should for any cause not be issued to said B. Ringo for said folding bed, then said B. Ringo hereby obligates himself, when it is definitely known that said letters patent will not be issued, if at all, to return to said C. Wade said stock of furniture, fixtures, wagon, hearses and harness, with the stock of furniture as full, as
14 near as practicable, as it now is and less the wear and tear of said fixtures, wagon, hearses and harness from use.

But it is understood if such transfer should for said cause be necessary, said B. Ringo is to retain all proceeds of sales made by him in said furniture business, and said C. Wade to retain proceeds of sales made by him in said furniture business and said C. Wade to retain proceeds of sales of such folding beds as he may make during said time.

Witness our hands, at Mexico, Mo., this day July 27th, 1891.

B. RINGO.
C. WADE."

Which contract was and is executory on the part of the defendant.

That during said negotiations, the defendant further agreed as a part of said contract to have the three folding beds he claimed to be having completed, at Quincy, Illinois, finished up at his expense for plaintiff without delay, and then to buy them of plaintiff, for the purpose of demonstrating their supposed usefulness, and also to furnish completely finished one Ringo folding bed of such make, construction and pattern as above described and as would and should answer for a pattern to make beds by which would stand up and not turn over or fall in using.

Defendant also agreed as part of his contract and agreement with plaintiff to procure a contract from his partner or joint owner J. C. Buckner, by which said plaintiff should have the complete management and control of said patent and have full authority without the consent of said Buckner (who he represented owned the other half) to sell, dispose of or otherwise so use said supposed patent and invention without obtaining the consent of said Buckner; and further, that he was also to procure in said contract from Buckner a further provision that Buckner would pay all costs and expenses in procuring patent at Washington; and further, that Buckner would introduce in the State of Texas the said patent and invention
15 upon the market of that State, without any expense to trade or on failure to do so immediately to forfeit said other half to plaintiff, all which representations and promises upon the part of the defendant were part of said contract, and plaintiff says that all such representations and agreements so made which do not appear in such written contract were fraudulently and wrongfully omitted by defendant from said contract.

That for and in consideration of all said contract, promises and undertakings on the part of the defendant, and because the plaintiff had no knowledge of defendant's fraudulent intentions or that his said representations were so false and fraudulent as aforesaid or

that they were so made and contrived to swindle plaintiff, but on the contrary that the plaintiff relied on the same and was thereby induced to sign said contract and agree to transfer and deliver to defendant all his stock of goods and other property named in exchange for said worthless invention, in pursuance of which the plaintiff delivered to the defendant on or about the 27th day of July, 1891, all his said property and complied — every way with his part of said contract; and that plaintiff hath never received any consideration whatever for said property.

That shortly after the execution of said written contract the plaintiff and defendant had another and further understanding in relation thereto which became a part of said original contract (unexecuted on defendant's part) to wit: he, the said Birt Ringo knowing that plaintiff was anxious to put said supposed invention upon the market by having said bed manufactured, agreed with plaintiff that he, the plaintiff, would go on north to Chicago and Grand Rapids and engage in attempting to put said bed upon the market and have it manufactured, and that said Ring- would speedily and without delay finish up one of said Ringo folding beds complete with bed springs, two spiral springs in rear and legs on the front and four castor rollers at the bottom for the purpose of easily moving
16 the same, with a glass in front so that it could be shown upon the market and to manufacturers, and so that it might be seen in actual use with all bedding, beds, springs, mattresses &c. thereon in order to induce its sale and to induce manufacturers to take hold of it in order that plaintiff might have an opportunity to make some sales and reap some supposed profits; that in pursuance of said understanding the plaintiff at great loss of time and expense went on to those cities expecting and fully relying upon defendant to finish and send to him said sample bed so finished for exhibition, which he failed to do. That defendant has never kept or performed any part of said contract or understandings, but on the contrary has broken them and failed to keep them in every respect in this: He has never obtained any letters patent for said patent right sold the plaintiff nor does plaintiff know of his ever applying for the same, and he consequently says that defendant has not applied for the same; says that instead of the supposed invention and patent sold plaintiff that defendant has attempted to put upon the plaintiff a patent for another and different worthless folding bed from the one so bought by plaintiff. Plaintiff also says that defendant has failed to deliver to him the three folding beds he was to have completed and finished at Heitland's factory in Quincy and *and* deliver to plaintiff according to his said contract.

That defendant in the pretended carrying out of a part of said contract shipped to plaintiff while so in the North the folding bed he contracted to finish up, but sent it in an unfinished condition, so that there was only one spring in the rear, no front glass, bed springs, and no legs on the same, and without sufficient spring capacity in the rear to operate a substantial front with such bedding and other things as ought to be thereon and that he, through said J. C. Buckner, sent him instr-ctions to not attempt to exhibit

the bed with any bedding or appliances thereon, but to exhibit it just as it was, as it was prepared to show only in that way, all which was done to obtain time in which for Ringo to dispose of the goods before it could be demonstrated that said supposed invention
17 was a failure, a fraud and a swindle, and for the further purpose of preventing any expert or practical mechanic from examining or operating said bed in a complete and finished condition and thereby concealing as long as possible the fact that said bed would fall over if operated with the ordinary weight of clothing and said other things on the front part and with sufficient springs in the rear to operate it with ease which bed would have fallen over if in a finished state with the ordinary bedding &c. on it, and in fact did and would fall over as it was, constructed then and was so out of position that it, and all others like it would be worthless.

Says that in further breach of his said contract the said Ringo induced, and used said Buckner for the purpose of taking from plaintiff and R. C. Cauthorn, receiver in this case, by writ of replevin the said folding bed so sent north, and the said defendant thereby got possession of said bed and as soon as he got such possession he removed the tracks from it, all in order to defeat the plaintiff from demonstrating by said bed before witnesses and in evidence that said bed would fall over in use and was worthless as an invention.

That said defendant further failed to keep said contract, in that, while in the North it was demonstrated to plaintiff that said supposed invention was worthless and he, plaintiff, notified defendant of its failure to operate; wherefore, to obtain further time for his wrongful disposition of said stock of goods he, through J. C. Buckner, notified plaintiff that the patent on said invention so sold plaintiff had been allowed on or about the 10th of August, 1891, when in truth and in fact such statement was false and known by defendant to be false at the time, but by means thereof he, said defendant, kept plaintiff still longer in — North, relying upon his hopes and the

* * * * * *

false representations to still be able to make the bed work; and that while said plaintiff was so kept away from home and said stock of goods, said defendant hastily moved about five hundred dol-
18 lars' worth of said goods away from said store to his home and thereby wrongfully converted them to his own use, when he, according to the contract, had no right to do so. Says further that said Ringo disposed of about one thousand dollars' worth of said goods during the time he so held them and hath converted the proceeds thereof to his own use.

That defendant for all the purposes of this action is and was at the time of its beginning insolvent.

(Says further that all the representations of the defendant made to plaintiff and all his acts and doings from the beginning of these transactions herein named, were all and each fraudulent and done and performed with and for the purpose of swindling the plaintiff out of his said property.)

Says further that said Ringo is not the inventor of said spiral spring, nor was he the originator of the application of such spiral springs in and toward the operation of a folding bed.

That defendant failed to perform said contract in prom*promi*sing a contract from said Buckner, but on the contrary as plaintiff alleges, believes and charge*r*, that the said defend- induced said Buckner to deny all right whatever on the part of plaintiff to make any kind of disposition of the said supposed invention or to control it. Says further that during all said time from July 27th down to September 17th, 1891, said Ringo was constantly engaged in violation of said contract by selling off said goods, often at a sacrifice or for cost and by hiring or loaning out said furniture when said contract only provided for ordinary retail sales at ordinary prices and that said Ringo so behaved because he well knew that it was his duty to return said stock of goods to plaintiff and had no intention of so returning them. Plaintiff says further * * *

19 And at that time the plaintiff was not possessed of sufficient reason to be capable of understanding the nature of said supposed invention or the scope of the contract he was induced by defendant to sign; by reason of which plaintiff in that particular was not on equal footing with said Ringo in making the aforesaid contract. That in all other respects plaintiff was at the time of making said contract and ever since has been competent to manage and carry on his usual and ordinary business affairs and transactions.

Plaintiff further says that he has no other adequate remedy for his said complaints than such as may and ought to be granted in this proceeding, and unless the rel*ei*f asked for herein is granted he will lose all his said property, and so, had no other such remedy when this suit was brought. Plaintiff *oersff* and tenders unto defendant any kind of a bill of sale or assignment or decree which may be necessary to reinvest in defendant any and every species of right or property if any, heretofore assigned by defendant to plaintiff by reason of said written contract, or any which in any other way has been transferred to plaintiff. Plaintiff further says that he should not at the institution of this suit have been required to give defendant any notice of the proceeding or in any way to apprise the defendant of the same or of its presentation at chambers,

20 because he alleges, believes and charges the facts to be that if he were to have given any such notice that said Ringo would then most likely have disposed of all said property so as to place it beyond the reach of plaintiff and defeat plaintiff in all his rights. That plaintiff was at the time this suit was brought, the owner of said stock of goods and other property together with the good will of said business concern, which he had been years in building up so that said good will was and is of great value to the plaintiff, and that if said business should be broken up by its stoppage during the litigation in this cause it will do him great and irreparable damage and injury as he will have no adequate remedy for damages against said Ringo.

That defendant was also at such time encumbering his property so as to endanger the plaintiff in his recourse.

That defendant has sold several hundred dollars' worth of said property on credit which has not been paid and is still outstanding as he believes and charges, and if defendant is allowed to collect it plaintiff will lose it.

The plaintiff therefore prays the court and the judge of said circuit court in vacation, to order the sheriff of said Audrain county to take possession of all said property not disposed of wherever found and of the books and accounts in relation thereto and also to appoint a receiver to take charge of said property, to manage, control, and dispose of the same and to continue the business according to the orders of the court; and for that purpose plaintiff hath given good bonds to amply secure all parties in interest in that behalf; and further prays for an account to be taken of all of said plaintiff's property which defendant has converted to his own use or sold and obtained the proceeds and to compel defendant to deliver all of said property yet in his possession (a particular account of which plaintiff cannot now give) unto the plaintiff, and further for an order prohibiting, restraining and enjoining the defendant
21 from collecting any of said outstanding debts for goods sold and finally for an order, judgement and decree of this court declaring said contract void and of no force or effect, and for the restoration to plaintiff of all said property which hath been so wrongfully and fraudulently obtained from him; and for all other proper relief.

JOHN M. BARKER AND
S. W. BICKLEY,
Attorneys for Plaintiff.

I, Charles Wade, on oath say that all the facts and allegations contained in the foregoing petition are true according to my best belief and knowledge.

CHARLES WADE.

Sworn and subscribed to before me this 23rd day of January, 1892. My term expires January 27, 1894.

JOHN A. McINTIRE,
Notary Public.

In the Circuit Court, Oct. Term, 1891.

STATE OF MISSOURI, } *ss:*
County of Audrain, }

CHARLES WADE, Plaintiff,
vs.
BIRT RINGO, Defendant.

Now comes the defendant herein, and after leave of court obtained, for his answer to plaintiff's amended petition says that it is true that on the 27th day of July, 1891, the plaintiff was engaged

in the business of undertaking and selling furniture at retail at Mexico, Missouri, and was the owner of the property in the
22 petition described, except about $500 worth which defendant has bought and added to said stock since that date. And defendant further says that the plaintiff had been engaged in said business for a number of years, and had accumulated said stock at the expense of a great deal of labor and money and time, and was an active, energetic and competent business man; and it is also true that on said date defendant was the inventor and owner of a half interest in a new folding bed, known as the Ringo folding bed, a useful and valuable invention, and the other half interest was owned by one J. C. Buckner, to whom said Ringo had transferred a half interest in said invention. That at said date said Ringo had filed his application with the Commissioner of Patents of the United States of America for letters patent upon said invention, and the said plaintiff was desirous of purchasing the interest of defendant in said invention, and all his rights thereto in said invention, and any improvements thereon, and in all letters patent that might be issued to the said Ringo on said invention. Whereupon the said plaintiff offered to trade his said interest in said furniture business to the defendant for his interest in said invention, &c., and they thereupon made said trade, and entered into the following contract, to wit:

"Whereas B. Ringo of Mexico Missouri has invented a new folding bed, known as the Ringo folding bed, for which he has made application for a patent for the United States of America in his name, and whereas said B. Ringo owns an undivided one-half of and in said patent with one J. C. Buckner of Mexico, Missouri, now be it known that the undersigned B. Ringo has this day sold and does hereby sell and assign to C. Wade of Mexico, Mo., all of his said undivided one-half interest in said invention, and the letters patent applied for and to be issued to said B. Ringo, for and to said 'Ringo folding bed,' and said B. Ringo obligates himself to assign his undivided one-half interest in said letters patent to said C. Wade, as soon as same is issued by and at the Patent Office of the United States, in such manner as any additional assignment of the
23 same may be necessary, other than this writing, to convey to said C. Wade an undivided one-half interest in said invention and letters patent. And said B. Ringo does hereby further sell and assign to said C. Wade my undivided one-half interest in all patterns, and all of said Ringo folding beds completed or being constructed at J. H. Heitland's in Quincy, Ill.

For and in consideration of the sale and transfer of the above undivided one-half interest in said invention and letters patent, said C. Wade does hereby sell, transfer and deliver to said B. Ringo, his entire stock of furniture, coffins, fixtures, one furniture wagon, two hearses and three sets of harness with said wagon and hearses, said stock of furniture being the same now in the building occupied by said C. Wade on Jefferson street in Mexico, Mo., which said stock of furniture, fixtures, coffins, wagons and hearses, harness, &c., is this

day delivered by said C. Wade to said B. Ringo. Said B. Ringo further obligates himself to assign and transfer for no other or further consideration than herein named, any further patent or improvement on said 'Ringo folding bed,' or other folding bed that he may obtain letters patent for at any time in the future.

If said letters patent by this application or other or different application should for any cause not be issued to said B. Ringo for said folding bed, then said B. Ringo hereby obligates himself, when it is definitely known that said letters patent will not be issued, if at all, to return to said C. Wade said stock of furniture, fixtures, wagons, hearses and harness with the stock of furniture as full as near as practical as it now is, and less the wear and tear of said fixtures, wagons, hearses and harness from use.

But it is understood if such retransfer should for said cause be necessary, said B. Ringo is to retain all proceeds of sales made by him in said furniture business, and said C. Wade to retain proceeds of sales of such folding beds as he may make during said time.

24 Witness our hands at Mexico, Mo., this July 27th, 1891."

(Signed) B. RINGO.
C. WADE.

That immediately upon the execution of said contract said Ringo took possession of said stock of goods and transferred his interest in said invention to the said plaintiff. Defendant further answering says that the plaintiff is a man of large business experience and especially in the handling and selling of folding beds, and that at the date of said trade he was thoroughly acquainted with this invention of the plaintiff, had examined it frequently, and knew fully as much of the invention as the defendant himself, and that he bought the same upon his own judgement, free from any warranties or representations from the defendant. That defendant continued to press his application for a patent upon said invention at *at* the request of plaintiff, and did procure from the office of the Commissioner of Patents of the United States of America letters patent upon said invention, which were granted unto the plaintiff, C. Wade, and J. C. Buckner, their heirs or assigns for the term of 17 years from the 22nd day of September, 1891, and now the said C. Wade and J. C. Buckner are the owners of letters patent upon said invention, as well as the owners of a certain improvement made upon said bed by this said defendant, application for letters patent upon which is now on file with the Commissioner of Patents of the United States of America. Defendant further answering denies each and every allegation in plaintiff's petition made, and not herein specifically admitted to be true. And having fully answered asks to be discharged with his costs.

GEO. ROBERTSON AND
W. W. FRY,
Attorneys for Defendant.

25 The plaintiff files herein his replication in the above cause as follows:

CHARLES WADE, Plaintiff,
vs.
BIRT RINGO, Defendent.

Plaintiff, for reply to the answer of defendant, herein denies each and every allegation thereof that is inconsistent with or contradictory of the averments of plaintiff's petition.

Further replying, plaintiff says that the patent, as set out in defendant's answer as having been issued to C. Wade and J. C. Buckner, at the instance of said Ringo, is void for the reason that the said patent so issued has neither novelty of invention nor utility of purpose.

Having fully replied, plaintiff prays for the relief asked for in his said petition.

S. W. BICKLEY,
JNO. M. BARKER,
W. H. MORROW,
Attorneys for Plaintiff.

26 *Evidence for Plaintiff.*

CHARLES WADE, the plaintiff, being called and sworn, testified in his own behalf as follows:

Q. You are the plaintiff in this case?

A. Yes, sir.

Q. Will you proceed to tell the court the circumstances connected with the trade that you entered into with Mr. Ringo concerning this subject-matter of this action?

A. I will admit, to begin, that I made some suggestions in
27 the way of trading my business to him before he spoke to me, but I also want to state that he was after me time and again, every day almost, showing me the bed and talking it up before ever I made a suggestion; and also——

By DEFENDANT: We object to all that.

By the COURT: Let him state what the conversation was.

WITNESS: I don't know as I can tell just what time it was that he commenced talking first about it.

Q. I will ask you this question: Were you the owner of this stock of goods over which we have been contending, last July?

A. I was supposed to be.

Q. Were you the owner?

A. Yes, sir.

Q. Was it situated in that building up there described in this petition?

A. Yes, sir; No. 11, Jefferson street.

Q. State the facts and circumstances connected with your entering into this trade as near as you can, confining yourself to the

time, &c., and what was said by either party; state first when the negotiations began leading up to this trade.

By DEFENDANT: We object to anything that passed between these parties prior to or at the time of entering into this written contract, for the reason that the written contract as stated in the petition is the sole evidence of the contract.

This objection was overruled and defendant excepted.

WITNESS: I will say that he was showing the bed to me from the very beginning, just as Mr. Robertson said, and he showed me first the cigar boxes, but I could not see his thoughts and
28 the idea he took, and I took no notice of it, and afterwards I think Buckner accepted the proposition he first made to me——

By DEFENDANT: We object to that.

By the COURT: State what conversation you had about it.

WITNESS: When he first told me he was at work on the bed he spoke of making it without weights and I told him it could not be done; that every one else that had tried it had failed and that he could not make a bed without weights, but he said he knew he could, that he had already figured it out in his own mind or thoughts; and then he went to work and constructed the first one mentioned by Mr. Robertson this morning. When he made this it was to be operated by an el-iptic spring in the back; I saw him experimenting with that style of bed, but he never completed one that way, and I believed it to be a good thing. Afterwards he put a different spring on it, above the track, a coil spring, and he came in to show me that; I went up and looked at it and went back and told my brother——

By DEFENDANT: We object to anything that passed between him and his brother.

This objection being overruled defendant excepted.

Witness continued: I told him I didn't think it was a good thing at first, but afterwards I did believe it was a good thing and would work all right.

By PLAINTIFF: I offer to the defendant a paper marked "Specifications of the Ringo bed" and marked on the back "January 15, 1892."

Q. Talk about the first bed; I want you to take this paper and state to the court whether that is a representation of the first bed Mr. Ringo got up.

A. I would say I never saw the bed complete or even
29 started. That had a cog wheel or cog track, and I heard him talking of using one and thought it would be best to use a cog wheel and cog track; that I thought so myself at the time. I heard them talking some of applying for a patent at the time when they were talking of this, but he never told me that he had applied for this; afterwards I looked at the other bed which had the spring

in the rear. I saw the bed only in an uncomplete condition; I saw it before it was out of Mr. Umstead's shop.

Q. What kind of a spring was it you spoke of that you had seen?

A. A coil spring above the track.

Q. What kind of a spring was that?

A. A buggy spring or el-iptic spring underneath the track.

Q. I hold in my hand patent No. 459,819. That, you say, you never saw until after the trade was made?

A. I never saw this patent and didn't know what he had applied for only what he told me. He told me when talking trade that he had applied for the spring below and above the track both, as it covered every kind of spring that could be used.

Q. Describe to the court the kind of invention he engaged to sell or did sell to you.

A. I would say as near as I can describe it, it was a rough bed, incomplete, about such a bed as this one in here, about the same depth and height, without a glass or legs to support it or springs on it to sleep on, and one spring in the rear to operate it.

Q. Where is that bed?

A. Right in the next door here, next room.

Q. When did you—when did he first show you that?

A. The one I looked at first; I was convinced it was a good thing; it was the one that was afterwards sent to Quincy to be finished and to be used as a model.

Q. Is that the bed that was sent north to you?

A. It is the same bed, and it was sent to me in the same condition that this one is in except it had no legs on it to support it.

Q. What beds, if any, of his invention, had you seen before the bed that was sent to Quincy?

A. I would say I had seen the one that was made out of poplar, a large one, and also this one before it was complete, but never saw any tracks on it or saw it set up. I understood afterwards they had set it aside not to use it, and I asked him why he had done so; I thought it was a neat, nice bed, and he said because it was made out of green timber and could not be used.

Q. Was that this bed?

A. Yes, sir.

Q. Was that true that it was made out of green timber?

A. I don't know as I am a judge; Mr. Weber said it was seasoned; he made the bed.

Q. That is the bed in front of you?

A. Yes, sir.

By PLAINTIFF: (Stenographer will note the bed introduced by the witness, plaintiff.)

By WITNESS: I will add that the projection on the front of the bed was not on the bed when I saw it in the shop at Weber's. That has been put on the bed since, making it three and three-quarters inches deeper than it was formerly; and, also, the rear has had 125

pounds of weight put in it since I saw it first; it was not in use then; it was without any tracks or springs or anything.

Q. The one you saw in use, what was it made of?

A. The first one I saw in use was made out of oak and
31 poplar and linn, I would say. The base of it was made out of 2 by 4 timbers of oak, also had 2 by 4 or 2 by 6, I don't remember which, in the rear to carry the spring, to attach the spring to that was also attached below.

Q. What was the depth of that bed?

A. 27 or 28 inches; 29 maybe; I would think 29.

Q. How about the weights on the back part?

A. I think the weight was mostly all in the rear. At least I understand from Mr. Weber——

By DEFENDANT: We object to that.

WITNESS: I know, myself, the front of the bed was made of quarter-inch linn.

Q. What was the back made of?

A. Out of poplar and oak together, I think, as near as I can describe it.

Q. Describe to the court the construction, height, depth and width of this bed brought here by you and shown in evidence as a model?

A. I have never measured the height of it, but the depth of it I would say is 28 inches.

Q. Have you a tapeline with you?

A. Yes, sir.

Q. Measure it now.

(Witness does so.)

A. The depth from front to rear is 27 and one-half inches; the height is six feet, ten inches.

Q. What is the height of the back?

A. It is eight inches lower than the front, or 7 and a half.

Q. State whether or not that is made after the plan and construction and statements as made to you by Mr. Ringo as being the bed he sold you?

By DEFENDANT: Do you mean this bed right here?

By PLAINTIFF: Yes, sir.

By WITNESS: He always told me the bed could be made
32 as other beds and he said they could be operated with a spring on each track with the same capacity of the one he had in the rear of the first one he showed me. Two springs to be used instead of one, one on each track, was what I was supposed to get, and he always said the bed could be made as other beds of that kind in operation; and he told me time and again that he could cut off all the lumber in the rear and that I could never tip the bed, because, said he, the springs are pulling down in the rear as hard as I did in front; and he said time and again that I could put 1,000 pounds on the bed if I chose to do so, and all I had to do was to put more spring capacity in the rear; that it never could

tip; that it, the spring, pulled down behind as hard as I pulled down in front.

Q. State whether or not the beds that are made with weights are ordinarily made to roll around over the floor.

A. They are made to roll around wherever you want them.

Q. Is there any bed made with the view of fastening it to the floor or wall that you know of?

A. I don't think it could be called a folding bed if it was, because no one would buy it.

Q. You don't know of any of that kind?

A. No, sir.

Q. State whether or not, if you know, whether Mr. Ringo superintended the making of this bed that you have brought here into court.

A. I think Mr. Ringo and Captain Buckner gave orders to have this bed made.

By DEFENDANT: Do you know? Did you hear him give the order?

A. I could not swear they gave the order, but I heard them
33 talking and they said they ordered a bed made at Weber's and that it was getting along nicely.

Q. Is this the bed that was alluded to by them?

A. Yes, sir.

Q. And you had Weber to finish it since this lawsuit begun?

A. I might say I had it finished here lately, for evidence principally.

Q. Come now and offer to operate it and show wherein its failures exist.

A. You will notice in the rear the spring vibrates straight down seven and a half inches when operating the bed; at least that is what I was told, and as we stand here and look at it it appears to be pulling down as he said, just as hard in the rear as you do in front. The bed he made to show me was very heavy in the rear and light in front with one spring in the rear to operate it, and he told me I could put as much spring capacity back there as I wanted to and pull down as hard as I wanted to and it would pull down just as hard in the rear as I did in front. The spring is vibrated down and the pressure is up, and if it was pulling down it would not tip as it does. I saw the spring vibrate in the rear and I believed it was pulling down as he said. (Operating bed.) It goes down this time, but it is a right smart effort to close it; and if I should tighten the springs as he told me to to help close it up as he told me—he said he could tighten up the spring so you could just slam it up. I think if you did tighten it so you could do that, when you went to pull it down you would be in danger of pulling it down on you.

Q. What does this bed lack that ought to be on it yet?

A. I will say some beds are made with a glass that would
34 weigh 100 pounds and put in the front, the full size of the front. (Operating bed.) You could raise the bed easier if

the spring was tighter; I could raise the one he showed me with my little finger, but I could not raise this one with two.

Q. What is it necessary to raise? What is the object of springs or weights there in operating the bed?

A. To balance it up and down with ease so a housekeeper would not have to strain herself in closing the bed or letting it down of course. The court can see that if I put 1,000 pounds of weight on the front here that the spring back there could not be arranged to throw it up.

By DEFENDANT: We object to his arguing the case.

By WITNESS: I want to show you that I was deceived and how I was deceived by the bed. I can prove by half a dozen——

By DEFENDANT: We object to that.

WITNESS: There are the facts, that the weight of the front will pull the rear over. That is my objection to it; because a bed that will tip over is not worth anything on the market.

Q. What is the difference—state how much heavier the rear of that bed is than ordinary beds.

A. It takes 2 by 4 or 2 by 6 and probably 2 by 8's to make it heavy enough in the rear to keep it from tipping. I would say that if you should put enough in the way of timber in the rear to keep it from tipping, you have a very cumbersome bed.

Q. State how much heavier that bed is than the ordinary Windsor folding bed. State to the court the weight of the rear of this bed.

A. 224 pounds of weight in the rear of this bed.

Q. And how much in the rear of the Windsor folding bed?

A. 92 pounds in the rear of the Windsor, without
35 weights.

Q. What about the fronts?

A. The front of this bed is 90 pounds made of substantial walnut, without the glass, and the front of the Windsor is 180 pounds.

By DEFENDANT: We object to anything about the Windsor bed as being immaterial.

By the COURT: I suppose it is for the purpose of comparison.

By DEFENDANT: The question is whether this bed will work or not.

This objection being overruled, defendant excepted.

Q. State to the court what you know, if anything, about Mr. Ringo attempting to work the bed after this pattern, and the pressure being so great as to break the iron tracks.

A. He broke one himself while attempting to put more spring capacity in the rear; that was after the bed had come back from Grand Rapids, Mich.

By DEFENDANT: That was after you made the trade?

A. Yes, sir.

By PLAINTIFF: It is a matter or demonstration of facts showing

that he had knowledge of the facts before he sold the bed to this plaintiff and is therefore competent.

The objection being overruled, defendant excepted.

WITNESS: I will state that Mr. Ringo told me before I left for the North that as soon as the bed came from Quincy he would finish it up complete——

Q. Was that after the trade?

A. We talked about it before and after the trade time and again, and he said he would complete it, putting the spring on each track with as much capacity as it should have to operate it. He said he thought it would take at least a third more capacity of the
36 two than what it would take with the one it had on it already; and he afterwards said he would order the extra spring with the same capacity as the one he had, so you could put on all the weight you wanted to.

Q. State what you know about him breaking a heavy cross-beam out of it trying to work it.

A. The front was punched out two or three times by the pressure of the spring, so I am informed; I didn't see it done.

Q. Have you the beam that was broken out of that bed?

By DEFENDANT: We object to that as being irrelevant.

The objection being overruled, defendant excepted.

WITNESS: I have the beam and track both. One of the tracks is on this bed I have here in court; it was mended by having a steel plate put on it. I also have a beam at the store, 2 by 4, made of oak, that was mashed up in operating the bed by the wheel jumping from the top of the track, after it came back from the North. I will also state that after the track was broken Mr. Ringo suggested himself that he would go and get another track and put it on the bed and have it ready to show a gentleman from Chicago, which he did, but it would not work smooth with it and I didn't care to show it as it was. We never could tighten the spring to operate it without tipping the bed over, which I found out one evening about six o'clock, the first time I had ever seen the bed tip. I went in there and found Mr. Ringo arranging the spring capacity in the rear of the bed as I had insisted on him doing, and I went out; as soon as I went back to where he was arranging it he quit work on it; I went on out again, to mail a letter probably, I think I went to the post-office, and as I came back I dropped in again and
37 I found him with only one spring on it, and he said he thought he would wait until morning to put the other on, that was in the evening, and we started on again, to supper; but I went back again to get my wheel to ride home on, and when I went in I found that the track was broke; then he tied it up and didn't put any more spring capacity on it until he got the other track, when it was put on the bed and the springs also. I happened in again, and that was the first I knew positively that it would tip. When he had enough spring capacity on it to operate it, it would tip.

Q. Did it tip then?

A. Yes, sir, the first time I saw it, to the front.

Q. The rear came over to the front?

A. It didn't come clear down; I didn't pull it far enough to tip it over; I would not have done that anyhow.

Q. Can you explain to the court how ordinary beds are used by weights—how they are built and operated?

By DEFENDANT: That is immaterial.

Overruled. Exceptions saved.

WITNESS: They are made in proportion—all I have seen or most of them at least, some are deeper than others; they are made up with as little lumber as possible in the rear, to make them weigh lighter and to make the freight less, &c.

Q. That is the object in making it operate with springs, to make it lighter?

A. Yes, sir, always. You might say you have not gained much by putting springs and tracks in this bed as it weighs 357 pounds and without the weights and springs and tracks the Windsor bed will not weigh 100 pounds—it will not weigh 100 pounds more with the weights in it.

Q. How much weight is used in the Windsor bed?

38 A. They work them with about 190 pounds now. They used to take about 600.

Q. What was the weight of the Windsor bed at the time you entered into this contract?

A. There are quite a number in Mexico and I think they would take four or five or six hundred pounds.

Q. How much weight does it take to work the Windsor, bed clothing, &c.?

A. 192 pounds now; they have improved it.

Q. How much did it weigh beside that—have you weighed it?

A. Yes, sir, I set it down somewhere. The Windsor without the weights would weigh 268 pounds, if I figured it right.

Q. What does this bed in the room here, this walnut bed that you have here in court, weigh just as it stands?

A. 357 pounds without the mattress.

Q. What was said, if anything, by Mr. Ringo to you at the time you were talking about the trade, as to taking out timber in the rear of the bed or anything that way?

A. He took pains to show me where I could make it lighter by not putting so much timber in the rear, by making the beams lighter; and also said a number of times you could cut off the back down to where the beams were and that you could not tip the bed because the spring pulled down in the rear as much as you did in front.

Q. State what Mr. Ringo said to you to induce you to make the trade with you before he made it.

By DEFENDANT: Now we object to that.

By the COURT: The question is not in good form.

WITNESS: I will state over again that he always told me
39 before we talked of trading and afterwards that the bed could be made to work perfectly and made up in proportion as other folding beds; and I knew if it could it would take the place of all other beds, and I told him it was the best bed on earth if it did.

Q. Is it true that it will work as other beds, on castors, loose from the wall? If you make the front light enough and the rear heavy enough to keep it from tipping and make it work as it should, would it then be in proportion to other folding beds?

A. The bed could not be made in proper proportion as other beds without putting weights in the rear.

Q. My question is, if a bed made after this pat-ern or made in the same proportion as other beds in use, would it work or fall over?

A. That would depend on the spring capacity in the rear. If you didn't put sufficient spring capacity in the rear to operate it with what you wanted to put on it, bed clothing, &c., it would not tip, but if you did, when it was made in proper proportion, it would tip.

Q. If it was made without sufficient spring capacity to operate the front part of it, would it not follow that the housekeeper would have to lift the bed and let it down herself—lift the front up and down by her own exertions?

A. There would be more exertion necessary than in an ordinary bed, but it would assist in lifting a little, without tipping; but if you made the bed as he said make it, if it stopped an inch from the floor it would tip over.

Q. What is the object in putting the springs in the bed?

A. To balance the bed and keep it from tipping.

Q. Is it not for the purpose of operating it with the tip of the finger or to manage it with ease and balance it up and down?

40 Q. That kind of a bed operated with weights would not fall over, would it?

A. No, sir.

Q. State whether or not you relied upon Mr. Ringo's representations in making the trade.

A. I could not rely upon anything else much, that and the false philosophy he used. He was after me every fifteen minutes in the day to show it to me. I never saw it tip when he was show-
41 ing it to me, and I never saw it only the shell of it, that was without the glass and legs, and he said if one spring would operate it that way, two springs would operate it with all the weight I wanted to put on it.

Q. State whether or not you relied upon his representations solely, in making the trade.

By DEFENDANT: He answered that once.

By the COURT: You may answer it.

WITNESS: I would say I did, most assuredly.

By the COURT: What representations was it you relied upon?

A. On this fact—or falsehood rather that appeared to be a fact, that he told me the spring was pulling down in the rear as hard as I pulled down in front.

By the COURT: Was it not a fact?

A. It was, and was not. It was a fact that he told me the spring was pulling down in the rear as hard as I pulled down in front and that the bed could not tip.

Q. Could you not see that it was or was not?

A. I could see it vibrate down but I could not see the pulling up. I went by the evidence before the five personal senses. He always told me the spring was pulling down in the rear as hard as I was pulling down in front, and hence it could not tip; I believed it; I was just that silly then. I have found out now that science has proven that false; it is being pushed down by the roller on the track and pulling up, though it appears to be pulling down if one would go by the evidence of the five senses. I was taught not to go by the evidence before the five physical senses but I was mixed there and I based my conviction on that evidence.

42 By the COURT: State what, if anything, you have received under this contract.

A. I have never received anything, though I had a bed shipped north to me while I was there, but I turned that over to him when I came back to have him complete it as he said he would before he shipped it to me, and I have never had control of it since.

Q. Where has it been since that time?

A. It was taken to his place of business or what was supposed to be his place of business, but it was never completed while he was in there.

Q. Did he take it back for the purpose of completing it for you?

A. He put it in the rear of the house there and went to work on it.

Q. And when this suit was brought it was there yet?

A. Yes, sir.

Q. Is that the bed that Captain Buckner took away from you by replevin?

A. Yes, sir.

Q. Who has that bed now?

A. Mr. Ringo, I suppose; he has had it all the time at his house, so they tell me.

43 Q. Tell whether or not you tried to take that bed to your home after you came back, and whether he objected?

A. I will say he wanted to buy it from me, and I told him "No, I guess I want to take it home myself;" but he insisted on my not taking it, that he wanted to finish it first, and so I didn't take it.

Q. Then this suit was brought?

A. Yes, sir.

Q. And they got possession of it afterwards, he and Buckner?

—. ——.

A. Outside of that folding bed then you have never received anything?

A. No, sir.

44 CHARLES WADE, on cross-examination, testified as follows:

Q. How old are you?
A. 31.
Q. How long have you been engaged in the furniture business?
A. About six years.
Q. Where?
A. Here in Mexico.

Q. What was you engaged in prior to that?

45 A. I used to be in the dry-goods business and worked in the grocery business about six years.

Q. How long have you been engaged in the mercantile business?
A. 13 or 14 years—somewhere along there.
Q. And you have been engaged in the furniture business about six years?
A. Yes, sir.
Q. During that time have you been actively engaged in it?
A. I have been doing all the business I could.
Q. About what amount of stock did you carry over there?
A. I suppose I had about an eight-thousand dollar stock of goods—seven or eight.
Q. At the time the trade was made?
A. Yes, sir.
Q. How much did you begin with?
A. A half interest in a $2,100 stock.
Q. And worked it up to that?
A. Yes, sir.
Q. During that time did you handle any folding beds?
A. Yes, sir.
Q. What beds?
A. The Andrews, the Boyington, the National, and other different makes, I don't remember.
Q. Were you pretty well posted on folding beds?
A. I sold quite a number of them.
Q. You knew the Windsor folding bed?
A. Yes, sir.
Q. Had you handled any bed during that time that worked with a spring?

A. I had handled a bed which was not an upright bed; it

46 broke in the middle and folded up and had a spring to assist in folding the bed. It was a small, light bed. And also I handled the Boyington bed which is known to dealers throughout the country on account of having no weights in it which is worked by an automatic lever which runs out in front and lets the bed down to sleep on; that is what tightens the spring in that bed and keeps it from tipping.

Q. Are you acquainted with that bed?
A. Yes, sir.
Q. Have you not sold a great number of various kinds of folding beds?
A. Yes, sir.

Q. You were engaged in the undertaking business as well?

A. Yes, sir.

Q. What other folding bed had you seen besides these you had handled?

A. The Phœnix, the Brunswick, and most every bed that is made; that is, I saw most of them when I went to Chicago.

Q. Before you sold out your furniture business here, I want to know your acquaintance up to that time?

A. I had not investigated many other beds except what I handled.

Q. You knew the objection made to the Windsor bed and Andrews bed and some others, was on account of their weight?

A. Yes, sir.

Q. You knew also that there was a desire among manufacturers to get hold of a bed that would work without weights?

A. Yes, sir; I knew there must be a great desire to have a bed that would operate without weights, because it would be less
47 trouble to move about over the house and less expense in shipping and setting up and operating and all that.

Q. When was it Mr. Ringo showed you these cigar boxes, that model that he had?

A. It was before he went to work on the bed; it must have been early in the spring?

Q. He showed it to you?

A. Yes, sir.

Q. And explained to you the operation of it?

A. He didn't explain it; if he did I didn't catch his thought.

Q. You didn't understand the model if he did?

A. No, sir.

Q. He told you his purpose was to invent a bed to work without weights?

A. He said he could do it and I said I didn't think he could.

Q. You told him if he did he would have a fortune?

A. No doubt I told him that.

Q. What kind of a spring did he have in that cigar-box model?

A. He didn't have any at all; he was trying to show what he would do.

Q. He went to work and built a model at his store?

A. Yes, sir.

Q. You and he had been in business for a number of years a few doors apart and were well acquainted and were frequently in each other's houses?

A. I used to go into his place for what I wanted, tack hammers and such things as that, and we patronized each other.

Q. And the consequence was then that you saw him daily?

A. I guess I did—not every day either.

48 Q. You say he proceeded then to make a large model, a pattern of this bed?

A. I thing he went to work on it a short time after he had the cigar boxes—a week or so.

Q. Didn't he come to your store to see and didn't you show him how these folding beds operated?

A. I took pains to show him how they worked.

Q. And he went on and made this large pattern at the store?

A. He made this one right here, that was the first one he made I think—no, I think not the first one either, probably.

Q. What was the first bed you saw at his store, frame or anything, that illustrated the principle upon which it was operated?

A. I think the first thing as I said before was a rough, crude thing, just a kind of framework that let down and up; I don't remember what kind of a spring it had—something like a buggy spring.

Q. It was simply a buggy spring that was afterwards called an el-iptic spring, was it not?

A. Yes, sir.

Q. And he had a slotted hinge?

A. Yes, sir; that was what he worked with at first.

Q. And he had smooth tracks?

A. I think he did. He had some he was trying to make smooth.

Q. And had them built up with leather to give them the required curve?

A. Yes, sir; at the top and bottom also.

Q. And before this he had it arranged to run as that one standing there before you?

A. Yes, sir.

Q. And that was all there was to the invention?

49 A. Yes, sir; all I could see.

Q. He first had the el-iptic spring beneath the tracks on either end of the beam, and these tracks rested on either end of that beam, and then these rollers were attached to the lower end of the folding part?

A. Yes, sir.

Q. And they run up and down on these tracks—and that is what you saw there?

A. Yes, sir.

Q. Is there anything else but that in this patent which you saw there, or in this cut you showed to the court awhile ago?

A. I don't understand you.

Q. That is all there is to this cut which you looked at a bit ago, is it not?

A. He sets forth a good many claims in his patent, and I could not give you the details.

Q. I didn't ask you to, except as shown in that cut; you saw that the tracks are cogged and the rollers are cogged and this cut you showed had cog rollers and cog tracks?

A. Yes, sir.

Q. That is the only difference in the cut you used there and this first model you spoke of that you saw at the store awhile ago?

A. It is pretty much that way, I suppose.

Q When did he call you in there to look at that?

A. As soon as he went to work on it, I suppose; I can't tell you the date.

Q. How often did you go in there to look at it?

A. Two or three times a day and sometimes oftener; every time he came after me.

Q. And he was there to see you often?

A. Yes, sir.

50 Q. Making suggestions about this and that and asking your advice about it?

A. I don't know whether you call it advice or not, but he would talk to me about it and I would give him all the ideas I could on the subject.

Q. And you assisted him a great deal in making this invention?

A. Some little things that didn't amount to much I suggested in a way to improve it a little.

Q. What was said between you and him about this smooth roller and track; didn't you propose that?

A. I think I did; at first I thought the cog wheel and corrugated track would be better.

Q. You are the man who suggested the corrugated track?

A. I think Captain Buckner suggested it; but I thought it was best after it was suggested.

Q. So the patent was applied for with the corrugated track and roller?

A. Yes, sir.

Q. That suited your ideas about that?

A. I didn't know anything about what he applied for a patent on.

Q. Was not that the way the patent was issued?

A. That is what the paper says, I think.

Q. Before that it was submitted to you, the idea of the corrugated track and roller was, and you thought it was a good thing?

A. I could not say positively that I approved of it, but I think I did.

Q. Do you know when he made his application for his first patent?

A. I do not.

Q. He afterwards rigged up another bed, didn't he?

51 A. Yes, sir, he made this one next, I think, I don't know.

Q. You mean that rough frame you see there?

A. Yes, sir.

Q. That showed the principle on which it worked?

A. I could get a faint idea of what I thought it was.

Q. Was there any other bed built at that store?

A. I think this is the next one that was made?

Q. You don't mean that same bed you have brought here?

A. It is the same thing except the lumber in the rear that we put on to make it deeper.

Q. Then there was another bed made with a quarter-inch front. Every bed has about the same case, has it not?

A. The case would have a great deal to do with it. If you put a front on it that was heavy enough to make it substantial and to make the bed as you want it, with a large glass in it, &c., you would have to make it deeper and heavier in the rear in order to keep it from tipping.

Q. Now come back here again. You afterwards saw a bed in there with the el-iptic spring removed?

A. Yes, sir, I think he changed it shortly after he made this.

Q. And the coil spring had been put in its place?

A. Yes, sir.

Q. Then you saw also that the corrugated track and rollers had been removed and replaced with smooth rollers?

A. I never saw any corrugated rollers at all, only the picture of them was all I saw.

Q. So you never saw any bed except the one with the smooth rollers and smooth track?

A. No, sir.

52 Q. Then you did see a bed afterwards that had a coil spring, didn't you?

A. Yes, sir; he had one there afterwards, the one that was made at Weber's shop after he made this one, walnut bed.

Q. The only difference between that bed you saw afterwards and the first one you saw was the coil spring which had been put in the place of the el-iptic spring?

A. I would say there was considerable difference in other respects.

Q. I am talking about the mechanics of the bed.

By PLAINTIFF: I insist that he be allowed to finish answering that question.

By DEFENDANT: I refer to the mechanical construction of the bed.

Q. I asked you about the mechanics of the bed.

By the COURT: You can answer the question.

WITNESS: Do you mean there is no other change in the bed I saw first with the spring under the track and this one with the spring above the track. Is that what you mean?

Q. I mean there was no other difference between the mechanical parts of the bed first shown you by Mr. Ringo and the other one you spoke of, except the el-iptic spring had been changed for a coil spring?

A. More than that. The depth of the bed had been increased and the slotted pivot had been changed to a stationary; that stationary pivot had been substituted for the movable pivot.

Q. I want to know the difference in the one you saw first there and the one you saw afterwards?

A. There was a difference. The pivots were changed for one thing.

Q. What difference was there in the pivots?

53 A. I could explain it better if I had a cut of it——

Q. You had a cut awhile ago that showed the pivots.

A. On the first one I saw there were two pivots that were movable and changed about and on the one that was substituted for the slotted pivots there was but one pivot and it was a stationary pivot.

Q. This one that had two pivots and changed about was what was called the slotted hinge?

A. Yes, sir.

Q. You had seen the slotted hinge before?

A. Yes, sir, I saw him working that—working with it, but I did not see what it would do.

Q. Afterwards you saw the one where the pivot was stationary? Then he had no bed at the store that you did not see?

A. I think I saw every one he had there from the cigar box up to the present bed.

Q. And you saw these beds operate as he showed them to you and you helped operate them yourself?

A. I will say I never saw this one operated or attempted to be operated. That is the walnut bed.

Q. I mean any other bed that he had at the store; I didn't mean that particular bed.

A. Yes, sir.

Q. There was another bed made by Weber that he had at the store?

A. We were just speaking of that I guess.

Q. Did you see a bed at any time at Umstead's shop?

A. Yes, sir, there is where I made the remark first and asked Mr. Ringo if he didn't want to trade his bed for my store.

Q. That was the first time the trade was mentioned?

54 A. I mentioned it and we went on and he said nothing and I never took any thought of it any more.

55 Q. He didn't speak to you through the week about the trade?

A. Yes, sir, he was there two or three times talking about it.

Q. Did you see him during the week before you traded?

A. I think I went to his house to look at it again before we traded—the one he had there was a linn bed with a quarter-

56 inch front. He showed me that one with the blankets and bed on it.

Q. He showed you the bed at the house after he had commenced talking trade with you?

A. Yes, sir.

Q. What did he say about it that day?

A. He took pains to show me that it had a rough track, &c., and said it would work a great deal easier with a nicer track and went through a good deal of talk about it.

Q. You were not particular about seeing the bed because you knew about as much about it as he did?

A. I don't know; I didn't see the bed fall down with the el-iptic spring in it, and didn't know that he had set it aside. I asked him why he didn't use the other bed, and he said because it was out of shape and that it wasn't made right and had green timber in it or something that way.

Q. Where is the bed now that he showed you at his house?

A. I guess he has possession of it; probably it is his mother's bed that he gave her.

Q. The bed is in use and has been several months?

A. I suppose so, I don't know.

Q. Then you traded, didn't you?

A. Yes, sir, if the bed was all right.

Q. Didn't this pass between you just before you traded? He told you he had applied for a patent?

A. Yes, sir.

57 Q. State if you didn't ask Mr. Ringo when that contract was made to agree in the contract that he would make it practical and make it work.

A. I said I wanted it put in, that I wanted it put in the contract that the bed was to be a practical, operating bed and that it would not tip. I will tell you what he said; he said: "I will not put that in the contract; some might want to say it was practical and some not; so far as tipping it is concerned, it will never tip; I will give you $500 if it will tip."

Q. So you agreed to leave it out of the contract?

A. It didn't get in. It was left out of the contract because he convinced me that the bed would never tip, and I knew it was practical if it would not tip, as a matter of course.

Q. And didn't you say that whether you made any money out of this patent or not it was all done fairly and Ringo would never be to blame for it on earth?

A. * * * I don't know as I said it then, but I have said it since. * * * That though I should never get a cent out of it I would keep on declaring that all things worked together for good to them that loved good, or something in substance of that kind.

58 Q. Didn't you tell R. M. White, editor of the Ledger, after you made this trade, that you had submitted that bed to an expert and bought it on his judgment?

A. If I did I don't remember a thing of it. I remember of saying something to the effect, and might have told him that I had corresponded with factories in regard to it, which I did. I told Ringo I wanted to take time to investigate the thing, and I wrote to B. & G. F. Co., at Grand Rapids, that I thought I had the best bed on record, and I said in case I got up a bed that will work perfectly without weights and stop within an inch of the floor and work so easy, can you manufacture the bed and will you give me figures on it? They wrote back that they would like to handle that kind of a bed; they said that was the very thing they would like to have.

Q. Did you show that letter to Mr. Ringo?

A. No, sir.

59 Q. So that is the abandoned bed that Mr. Ringo would not take, that you had fixed up and brought here to show as a sample bed at this trial?

A. That is the bed that Ringo said was laid aside.

Q. You didn't answer my question.

A. It was set aside.

Q. He would not take it and you went there and got it and put some old tracks in it and brought it here?

A. Yes, sir; I bought it in here for evidence, with three and three-fourths inches added to the front and 123 pounds of weight added to the rear to make it stand up.

* * * * * * *

Q. State whether that bed corresponds to the one he described to you in selling it to you.

By DEFENDANT: We object to all this testimony.

WITNESS: I take rather a lengthy answer probably to explain myself; but he always told me I could make it as other beds are made and these springs back here could be arranged to operate it without its tipping. That bed is not made up as he represented they could be; it is a good deal heavier and taller.

Q. What is the object in making that rear part so heavy; was it not to prevent it from going to pieces by the action of these springs?

A. Yes, sir; and to prevent it from tipping over, too.

Q. State to the court whether Mr. Ringo ever showed you any model or ever described to you the bed he sold to you as being like this bed as shown in the paper which has already been noted.

A. I never saw any bed like this or heard of any only
60 what was said about it when they first started to make the bed. He never said anything to me about this one, when we were talking about trading, having a buggy spring beneath it.

Q. Was any model of that ever shown you?

A. No, sir.

Q. Was any drawing?

A. No, sir.

Q. Do you know whether any model has ever been constructed by him like this one shown in the patent?

A. I guess not any that has been a success.

Q. Was any model ever made by Mr. Ringo like this with corrugated tracks?

A. No, sir.

By DEFENDANT: The patent states on its face that no model was ever filed in the Patent Office in Washington.

CHARLES WADE, on recross-examination, testified further:

Q. Mr. Ringo afterwards made an application for a patent upon the smooth track and coil spring, didn't he?

A. I don't know.

Q. Didn't he tell you that he had made an application for it? Didn't he submit the application to you before it was sent off?

A. I remember him saying when talking trade that the patent covered the spring under the track and above it both.

Q. State if after this trade was made he didn't show to you his application for the improvements, or rather the application for the patent on the improvements with the coil springs?

A. He showed me some papers one day, but I will state that I think he said he was going to make an application for a smooth track and the spring above the track and a patent nut to adjust the spring with.

61 Q. Did you examine it?

A. I never looked at it; I looked at the paper, but did not examine it.

Q. You knew what it was?

A. He told me he was going to make application for the spring above the track and that application is pending yet.

Q. And he also said he didn't think he could get a patent on that because it amounted to the same thing as the other application?

A. Yes, sir; because the same principle was already covered by the other application he had made. He didn't say those words exactly, but that was said before we traded, that the patent called for the spring above and below the track both.

By PLAINTIFF: That was all after the trade?

A. Yes, sir.

* * * * * * *

CHARLES WADE, being recalled by plaintiff, testified:

Q. Is this bed made after the pattern or proportions of beds now in use or not, this bed you brought here?

A. I would say that I don't know of any beds made as deep from the rear to front above the base where the pivots are.

Q. Do you know of any as heavy in the rear?

A. No, sir.

Q. How much heavier is that back than is ordinarily used now?

A. I would say about 123 pounds, and probably more than that.

CHARLES WADE, on recross-examination, testified further:

Q. You say this bed is how much heavier than any other bed?

A. About 123 pounds in the rear heavier than any other bed.

Q. That is the rear part of it?

A. Yes, sir.

Q. You mean when you take the weights out of the Windsor bed and these other beds, then the hind part of this bed is heavier than the rear of any other bed—after the weights have been removed?

A. Yes, sir.

Q. You mean then that the perpendicular part of that bed, exclusive of the part that lets down, is heavier than that part of any other bed, exclusive of the weights that you have compared it with?

A. Yes, sir.

61¼ GUS WEBER, a witness on the part of plaintiff, testified as follows:

Q. You are a cabinet workman?

A. Yes, sir.

Q. You live here in Mexico?

A. Yes, sir.

Q. State whether or not you undertook to make a folding bed for Mr. Ringo.

A. Yes, sir; I did.

Q. Do you know whether any portion of that bed there is part of it?

A. It is.

Q. What part?

A. The whole of it just as it is, only Mr. Wade had some added to it.

Q. What did Mr. Wade have to do with it?

A. He had it finished up; there was nothing but the front and rear frame there when he got it.

Q. Show what he added to it?

A. He had the outside panels put in and the track put in and the rollers on the front were there when Ringo left it.

Q. Do you notice this projection in front?

A. No, sir, Mr. Wade had it put on.

Q. How came you to make that thing?

A. Mr. Ringo hired me to make it.

Q Do you recollect what time it was?

A. It was either the latter part of February or in March.

Q. What did he tell you to make it out of?

A. Walnut.

Q. Did you do so?

A. Yes, sir.

Q. Did you make it as he told you and directed you to?

A. He was there all the while it was being made and directed how it should be done.

* * * * * * *

Q. Did you have any communication with Mr. Buckner about it?

A. I did.

—. What was it?

A. Mr. Buckner came down there.

By DEFENDANT: We object to that.

By PLAINTIFF: My reasons for insisting on this question, our object in introducing this testimony is to lay the foundation for the introduction of other testimony showing that Mr. Buckner and Mr. Ringo were acting together in each other's interest and against the interests of plaintiff; and in regard to that we expect to prove that Mr. Buckner wrote a threatening letter to the witness denying him the right to proceed with or do anything with this bed; and show further that this was all done to prevent the introduction of proper evidence in this case. Or, in other words, to suppress it.

The court sustained this objection; and to such ruling the plaintiff excepted and saved his exception at the time.

Q. Look at that letter and see if it is the letter you got?

A. Yes, sir.

Mr. Buckner was called and admitted the execution of the letter which is as follows:

"HOTEL BAYLES, HOUSTON, TEX., *Oct.* 12*th*, 1891.

Mr. Gus Weber, Mexico, Mo.

DEAR SIR: As both B. Ringo and C. Wade deny owning any interest whatever in the patent on the folding bed known as the Ringo folding bed, and as I do own an undivided half interest in said patent, and the law, under the circumstances gives to me the entire

control of said patent until the suit now pending between said Ringo and Wade (one-half of said patent) is decided. I therefore do hereby warn you that I will prosecute to the full extent of the law any person or persons who manufacture the Ringo folding bed without my permission.

(Signed) J. C. BUCKNER."

61½ GUS WEBER, being recalled by plaintiff, testified:

Q. I want to ask you if you are familiar with the bed that was taken to Ringo's store and shown there?

A. Yes, sir.

Q. State to the court how much heavier the back part was than the front part.

By DEFENDANT: I want to object to that. * * * What is the difference whether the rear be light or heavy, provided it operates all right. If it is necessary to make it heavy in order to make it operate, then it shows the utility of the invention, and if by taking from the front, as they contend they have to do that, that goes to prove the utility of the invention. They contend it is worthless because it is not as good as other beds, or because it will not work as easy as some other beds. They say they have a right to prove that, because by reason of having to build it heavy behind it is not saleable. The question of saleability cannot enter into it. The bare question of utility is all there is in it, and if it is that, that is the end of the case. Now that is their view, that they have a right to show want of utility, and when they fail to show want of utility they say they complied with their petition. We don't admit that. We say it is a valid transaction, although there is no utility in the invention; but what difference does it make whether it is heavy in the back or front, except to consume time. The case is no part of the invention. The invention is the instrument that is gotten up to operate the bed.

By the COURT: If it is for the purpose of showing that the bed is so constructed that it is not possible to operate it to any de-

61¾ gree of usefulness or value, it is competent—that is, if there is no utility to the bed it is competent to show it.

By DEFENDANT: The case is no part of the invention. The invention is the thing that operates the case. If it is necessary to have a broader base or have it heavier behind or in front, then it only goes to show——

By the COURT: I think I unde-stand you. I think if these gentlemen can show that the article that is patented is so out of proportion when constructed according to the patent that it has no utility, that goes to the very merit of the case, but if it can be of some use or value so constructed then it is of utility.

By DEFENDANT: I think that is exactly the issue. They set up in their petition the letters patent and——

By the COURT: If you can show that the bed is constructed according to the patent in all its parts and is then useless, that will answer the case.

The objection is overruled; to which ruling defendant excepted and saved his exception.

Q. How much heavier is the rear of the bed that was made for Ringo and taken to the store than the front?

A. I think the front was just about one-fourth as heavy as the back.

By DEFENDANT: Our objection goes as to all that. The only thing we undertake to do is to get down to the real issue.

By the COURT: The question of itself is absolutely valueless in itself and of itself without it shows that a bed of that construction meets the requisitions of the patent. I don't know about the matter of pounds without you go further and show that a bed so constructed does not answer the call of the patent.

62 BIRT RINGO, the defendant, being called to testify as a witness on the part of plaintiff, testified as follows:

* * * * * * *

Q. State whether or not you undertook to finish a bed that was sent up North to this plaintiff while he was in the North?

A. No, sir; I didn't.

Q. You had nothing to do with it?

A. No, sir; not at that time.

Q. What time did you have anything to do with it?

A. Before I sold; that bed was in Quincy, Ill., at the time he went North, and when it arrived here it was shipped right from the depot North and never was brought to town.

Q. Who shipped it?

A. Captain Buckner.

* * * * * * *

Q. Didn't you agree before Charley Wade went North, before he left here, that you would have that bed fixed up and sent to him?

A. No, sir; I did not.

BIRT RINGO, on cross-examination, testified further:

Q. You are the defendant in this case?

63 A. Yes, sir.

Q. You are the inventor of this bed?

A. Yes, sir.

Q. Do you see that bed there?

A. Yes, sir.

Q. Did you ever see it before?

(The attorney here refers to the bed introduced by plaintiff.)

A. No, sir; well, I have seen it, slightly, but never examined it.

Q. Did you have that bed built?

A. I did not.

Q. State where that bed came from, if you know?

A. The front of that bed I saw in Weber's shop; the balance of it I never saw only in the back end of the receiver's store.

Q. When did you see the front of it in Weber's shop?

A. It must have been in February last.

Q. What was the occasion of you seeing it there?

A. Captain Buckner and I were to have a bed made there.

Q. Is that a part of that pattern?

A. The front of it looks very much like it.

Q. Did you ever accept it when it was made?

A. No, sir.

Q. What was the matter with it?

A. When he made this bed this end was a single plank and it was very thin, made after the manner of the patent, with a slotted hinge, and when that front went down on one occasion it split out below there; and Weber admitted that the bed was not what it ought to be and said he would make another one in its place and that we need not take that one.

64 Q. So you never took it?

A. We never received it.

Q. But had another made in the place of it?

A. Yes, sir.

Q. Can you explain the operation of that bed and the mechanics of it?

A. Yes, sir.

Q. Will you please come down here and do so?

A. (Examining bed shown by plaintiff.) That circular track you see between these timbers is four inches wide. The roller that works on it is about an inch and a quarter wide but should be four inches wide to fill up the whole track,—that is the idea; that roller is an inch and a fourth and the track is four inches wide and you don't get enough friction that way and the roller should be the same as the track to go easy and smooth. My best knowledge as to the cause of its tipping, from the short time I have had to examine it in, is that they have added this piece additional, and they have drawed that track this way causing it to bind as it climbs up the backward part of it to such an extent that it will not come down properly. If it was set that way now it would come down, in my opinion, very nicely without tipping.

Q. That track has been removed from its natural position?

A. Yes, sir; causing it to tension it so tight it will tip: it is on the same principle a sewing machine is; if you make the tension so tight, it will break the thread; but if you leave the tension of the spring proper and right, the roller will always move, and as long as that moves this bed can't tip. In my opinion, when the roller travels that bed will not tip; now, don't you see?

65 Now, in running it, along there where it stops, where that roller stops,—there is a rusty place where that roller touches; and I am of the opinion this track has been broken and mended; and I am of the opinion that being so, that is where it catches.

Q. If the rollers would run smooth on the track and they were setting in the position they ought to be in, will that bed tip at all?

A. I don't think you could make it tip if you would add any amount of weight to the front.

Q. The rollers in that bed are how wide?
A. An inch and a fourth.
Q. What width should they be?
A. Four inches.
Q. What difference does that make?
A. The principle of that bed is based upon a certain amount of friction, because by the tension of this spring, it must have a certain amount of friction so the bed will be the same tension from this point to the floor and have the same pressure all the way up and down. With an inch and a fourth roller on a four-inch track the friction is not sufficient to hold that bed the same all the way down.
Q. State if the back part of that bed is not made exceedingly light as well?
A. Yes, sir; the only difference is the one we had the back part went up to the top, but I have not examined it back there and don't know anything about that.
Q. You have brought a bed up here have you not?
A. Yes, sir.
Q. What bed is that?
A. That is a bed that was in Quincy at the time this trade was made, and it is the bed that Captain Buckner shipped to Mr. Wade up North.
66 Q. You have, since this suit was commenced, got it from Captain Buckner and fixed it up and put it in order and have it here now to illustrate this principle by in this suit?
A. Yes, sir.

BIRT RINGO, on redirect examination, testified further:

Q. That, then, is the bed you had made in Mr. Weber's shop?
A. I didn't have that bed made.
Q. Do you say you didn't have any of that bed made?
A. He made the front.
Q. Is not that part of the same back?
A. It may be.
Q. Is not that 100 pounds heavier than the one you had made?
A. I don't know.
Q. Are not these the same rollers you put on the bed?
A. That may be.
Q. Is not that the same track that you broke in operating it over yonder?
A. I could not tell by looking at it just now.
Q. Didn't you say you noticed a piece of steel or something riveted under it?
A. I did try my best to feel where it is broken but I failed to find it.
Q. Give your impression as to whether that is the same track Look at the track and see if it is not the same one you broke?
A. It looks very much like it.

BIRT RINGO, on recross-examination, testified further:

Q. Did you find a broken place just now when examining it?
67 A. I find a plate set in the track there.
Q. What effect would that have?
A. If the rivets in it would go through it would catch the bed.
Q. And would not that make a crack that would make it rough?
A. Yes, sir; it would be a great disadvantage to it. I will say that, in regard to the rollers I put on that front, we came to the conclusion they were too narrow and could not be used on that bed.
Q. In your patent they are four inches wide?
A. I don't know.
Q. They are the same width of the track, whatever it may be?
A. Yes, sir; certainly.
Q. Whenever it does tip, state if it is not when the roller is right on that rough plate at that time.
A. If it is not that it is when the roller is off of its position on the track, because if that roller is free, the track should be in perfect harmony with the route the roller takes. If you set it too far forward it binds, but if you have a circular track in harmony with the route the roller takes I never saw the bed tip or show any disposition to tip in my life.
Q. Would that tip there as it stands now?
A. I don't see how it can.
Q. The only time it tips, even that bed there, is when it comes down and because that roller catches?
A. There is some obstruction there; if it went as smooth there as it does at the start or at any other point, it would not tip.
Q. Then all that is to be done to that bed is to construct it so the surface of this track is in line with this roller, and then it works perfectly?
68 A. Then it works as good as any bed.

BIRT RINGO, on redirect examination, testified again:

Q. Did you discover any rough place on that track?
A. I could not get my hand under it to see; I got it underneath, but could not reach it.
Q. I understood you to say that if the tension on the back was increased you could increase the weight of the front?
A. I did not.
Q. Didn't you make a statement of that kind a bit ago?
A. No, sir.
Q. Nor nothing like it?
A. No, sir.
Q. What did you say, if anything, about increasing the tension on this spring in order to allow you to increase the weight in the front without making the bed tip?
A. I don't recollect of making it.
Q. What did you state to the court about preventing the bed from tipping? Didn't you say it was the friction caused by these rollers on the track that did it?

A. No, sir.
Q. You didn't?
A. No, sir.
Q. You stated nothing in that regard?
A. I said the rollers should be four inches wide in order to meet the four-inch track.
Q. And you told the court that was the reason this tipped?
A. No, sir.
Q. Tell the court the difference between the friction on that roller and the one you say is a better roller?
A. It seems to me that a four-inch roller on a four-inch track is more proper than an inch-and-a-fourth roller on a four-inch track.

69 BIRT RINGO, being called by plaintiff, testified as follows:

By PLAINTIFF: Did you get a notice to produce a certain bed here in court?
A. Yes, sir.
Q. Did you do it?

By PLAINTIFF: Will the court make an order now and let us have the bed to weigh, and so forth? * * *

By PLAINTIFF: I would like for an order to get possession of a certain bed defendant has here. I suppose they brought it in obedience to an order we served on defendant. It is in the anteroom, but we would like to have it for the purpose of using in this case, and we ask for the order.
By DEFENDANT: We claim it is our evidence and we can't introduce it until we get to our side of the case, and we think we have a right to control it until then. * * *
By PLAINTIFF: Will your honor allow the sheriff to weigh it in there?
By DEFENDANT: Just as well go on with the testimony now. We have no objections to weighing the bed when we get to it, in there, except this: we don't think that question is material and doesn't have anything to do with the issues.
By the COURT: Bring in the bed and scales (which is done by the sheriff and the bed weighed).
By the SHERIFF: The bed and bedding on it weighs 454 pounds. The bedding weighs 45 pounds. * * *

By DEFENDANT:

Q. You brought that bed in here?
A. Yes, sir.
Q. You are the inventor of that bed?
A. Yes, sir.
Q. When did you invent that bed?
A. It must have been in February, about a year ago.
Q. In 1891?
A. Yes, sir.
Q. You understand the principle upon which the bed works?

A. I understand that it works just as you see it work; I cannot tell the whys and wherefores, though.

Q. You understand the process by which it works?

70 A. Yes, sir.

Q. Get down there and take hold of it and operate it for the court and explain to the court the mechanical principle upon which the bed works.

By PLAINTIFF: We object to the witness testifying as to that, for the reason that the witness is not on the stand in obedience to the call of plaintiff to testify in regard to this matter, and his testimony is out of time and place, as the witness for the defendant.

This objection being overruled, plaintiff excepted and at the time saved his exception.

WITNESS (exhibiting bed): This bed is constructed with a cast-iron circular track fastened to the base, four inches wide, extending to the back of the bed; there are two large rollers with a four-inch face about three inches in diameter that roll on the surface of the track; as you lower the bed these rollers start up the incline, and that produces a powerful pressure back that way. For instance, if you put your hand right under here, and as the bed comes down, the front of the base is elevated to such an extent that you can slip your hand in and out under it, showing that the force, as you come this way, elevates this part of the bed; I have many times taken a case-knife and run under these castors there, showing that this pressure up has a tendency to lift the front of the bed; and the bed has never shown any disposition in the world to tip, to my knowledge. I never heard of its tipping until after he, plaintiff, came back from the North.

Q. Lower that bed up and down five times now.

—. (Witness does so.) That bed will stand in half an inch of the floor.

Q. How many times did you lower and raise it?

A. Five times.

Q. Did it tip any time?

71 A. No, sir.

Q. Did it show any disposition to tip?

A. No, sir.

Q. Say what you were going to say about the bed standing in half an inch of the floor.

A. This bed will stand in half an inch of the floor, an inch of the floor or three inches of the floor. You can put on another mattress, and the only difference is it comes down a little quicker and it is a little harder to get up. For instance, you take the Windsor and it is weighed in the base there in pockets made to receive the weights with enough weight to balance an ordinary amount of bedding—for instance, a couple of sheets, comfort, &c. If you had a feather bed on top of it it would come down a little quicker and go up a little harder on account of that weight. You don't propose to take up a saw-mill or anything of that kind. It takes up all that is necessary in the way of bedding, &c.

By DEFENDANT: Will the court step down there and let him show how the tracks work and the springs, and all that?

By the COURT: Certainly.

By WITNESS: It is made of oak. This bed is made on the principle of a car brake. This surface is a brake to the rollers. If you screw these screws up and make the tension so tight that the rollers will not turn, I imagine it will tip; but so long as the rollers move on the track you can't tip the bed. It is on the principle of a sewing machine; you can make the tension so tight it will break the thread; but so long as the rollers work, it will never tip this bed. This back is made of poplar, as light as it can be made; and the framework of that bed underneath might be possibly two inches wider than this. This is the second bed that has been made.

72 It is not supposed that a new invention like this, that you would get it perfect on the second bed.

Q. Who built that bed for you?

A. It was built by D. C. Wright and John Umstead.

Q. They are carpenters here in town?

A. Yes, sir.

Q. When was it built?

A. It was built about the 6th of July.

Q. What have you been doing with that bed ever since?

A. It was brought from the shop to put into Bryan & Ringo's hardware store.

Q. How long did you keep it there?

A. Probably two weeks, I don't know; maybe ten days.

Q. State if Mr. Wade saw it while it was at your place there?

A. Yes, sir.

Q. When?

A. He saw it all the time it was there.

Q. How long before the trade was made did he see it there?

A. The trade was made the 27th of July.

Q. What bed did you have built before that?

A. There was a bed built over at Weber's shop that I took to my house and used for a month or two to test it as to its working qualities and see if I could make any improvement on it and if it was all right, before I undertook to manufacture it.

Q. Where is it now?

A. At my brother's house; it belongs to my mother.

Q. How does that bed work?

73 A. As nice as it can.

Q. How does it work compared with this one?

A. Not quite as well as this one because that bed there was not made just right; it was poorly constructed and poorly gotten up, but it works very nicely; nobody would object to it.

Q. That bed that was brought in here by the plaintiff—when did you first see that bed?

A. I saw it in the receiver's house the other day.

Q. What were they doing with it there?

A. He was showing it to the people.

Q. The receiver or Mr. Wade?

A. I think both of them.

Q. Did you get this man Weber to make any beds for you?

A. Yes, sir.

Q. What bed did he make?

A. He made or attempted to make this walnut bed produced here by plaintiff, here in court. I took a model over there to make a bed by that plaintiff furnished me, a cut of the Phœnix bed which he considered a pretty cut, and he said the plainer we made the bed the better it would sell. I took that cut to Weber's shop and asked him to try and pattern the bed from that cut; I got the dimensions of the bed from a Windsor, exactly; I took the depth and height and width from a Windsor as my guide for the size of the case, and when Weber made the bed he made this upright piece three-fourths inch thick; and of one plank. I objected to it and told him this part was not heavy enough where the slotted hinge would work—it was too light, but he insisted and said he knew about as much about it as I did, and I thought maybe he did; and I thought if it would answer, being the first bed made, it would save doubling this
74 lower part here; and we had narrow rollers which are on the walnut bed now which are an inch and a half in width and very imperfect and I had an el-iptic spring in it. One day I was there and they had a plank against it here, to keep it from dropping down, the track was partially fastened up, and I took the plank away and stood around awhile and then I concluded I would fix the track a little different and I forgot about the plank and didn't brace it again, and the whole front fell and split out a part of it here, and Weber said "Set that bed aside and I will make another one in the place of it; it ain't what it ought to be and I will make you one in the place of it." We thought that was a fair proposition on his part, and I told my partner, Captain Buckner——

By PLAINTIFF: We object to what you told him.

Q. You never took that bed out of his shop?

A. We never received it or had anything to do with it; he agreed to make another one in the place of it.

Q. Did he do it?

A. No, sir; but he made another bed, a poplar bed with a linn front. He said: "Let me make you a bed; I want to make you one;" and I said "How?" and he said "I will make it and guarantee it to work or no pay." I was to furnish the spring and everything and he was to do the cabinet-work for $20, and it was left with him. He said he would leave out the slotted hinge and use a pivot, that it would answer every purpose. I said "You can try it with a pivot, but we want the slotted hinge." He made it to his own notion and there never was a word said by me to him, and he finished it. That is the bed my mother has. I took a mattress and springs over there and put it on it, as this bed is, and it worked nicely except
75 the timber that was on top was weak and it gave instead of the spring giving, and I called his attention to it and I said: "That bed would work to perfection if you would put a heavier

piece of timber on it" and he said: "I have spent the last minute I want to on that bed and I want my money;" and so we thought it would do and we paid him.

76 Q. You made that model at your store with an el-iptic spring?

A. Yes, sir.

Q. Did the plaintiff see that?

A. Yes, sir.

Q. How frequently did he see it?

A. After he saw the two cigar boxes put together, he said to me, "If you ever get a bed up to work on that principle or any other like that, you have a fortune." Captain Buckner came in there soon after that and I showed him the cigar-box model. Plaintiff was in there after I got the model made. After I got this model made full size, I took it to my house and tested it with bedding and everything and then brought it to the store and plaintiff was in there repeatedly and commented on it and said we had the right principle, he was sure of that, and said, You have got the right bed, and he said "I want you to give me the agency of that bed in this town; you have the right principle sure; and that bed will knock everything out on this earth in the way of a folding bed." We had a smooth track on it then.

Q. And this has now?

A. Yes, sir.

Q. When did you change it to a cogged track and roller?

A. One time I was working the bed up and down and the plaintiff came in there—he was continually examining the bed and suggesting, and he took me into his store and showed me his beds; I didn't know whether they operated with springs or weights, but he showed them all to me.

Q. When did you change it to a cog track?

77 A. He said he was afraid that a smooth-faced roller on a smooth-faced track would some day wear smooth or slick, and would not hold the bed; that it would just drop down and they would not catch it as it went up, and I thought he might be right about it and that it was a difficulty we might have to overcome; and afterwards Buckner suggested that we make a corrugated track and roller and I went and got a fluting iron and showed him Captain Buckner's idea and asked him what he thought about it and he said certainly, it was a splendid idea, and he advised me to put that in the patent. We had then applied for the patent.

Q. When did you apply for the patent?

A. It must have been in March or April.

Q. How did you apply for it; what was the specifications?

By PLAINTIFF: We object to that, but go ahead.

WITNESS: We applied for the circular track, rollers to roll on the circular track, track to be fastened to the base of the bed——

By PLAINTIFF: Is that the application here on file?

WITNESS: Yes, sir; and the el-iptic spring in stirrups on the end

of the beam to receive the end of the track, these tracks to be corrugated and the rollers to be corrugated, and the slotted hinge——

Q. What is the slotted hinge?

A. There is a tap here that works through a slot and it has a head on it that comes out on this side. It throws the strain of the bed to two different points—when you don't want the pressure it throws it out here and when you do it throws it here. It is an improvement on the single pin. The slotted hinge would work this bed with one spring instead of three, I think.

Q. State if you made known to plaintiff the fact of your application for a patent and what it covered.

78 A. He knew every point of what the patent called for and what he had applied for, because he objected when I told him about taking out the el-iptic spring and putting in the coil spring.

Q. Did he know of the patent as you applied for it and the specifications?

A. Yes, sir; every detail.

79 Q. How many beds did you have made with the el-iptic spring?

A. We put the el-iptic spring in the bed now at my mother's; that is the bed that had that spring in it.

Q. When did you make the further change to the spiral spring?

A. That was made I guess some time in June, to the spiral.

Q. What, if any, knowledge did he have of that?

A. He came in there or probably I went in his place and asked him in to see the coil spring operate; he didn't like it. He had then become the agent for this bed in Mexico. He said he objected to it; and I said, "Why?" and he said the el-iptic spring would show for itself what it would do, and now you have to do a sight of talking to show that that spring will not become weak from use; he said a buggy spring never does, but a coil spring might. I had a letter from Gibson & Co. and I showed it to him, stating what they said about the coil spring, and he said if that is the way of it I have no objection to it.

80 Q. So you said, I believe, that you never did have a bed made with a corrugated track?

A. No, sir; I took a wooden pattern to D. C. Wright's shop to get him to put on a corrugated track made of wood to——

Q. You concluded finally to stick to the smooth track?

A. No, sir; only temporarily, but we thought we would keep that and get up a corrugated track too, but we had never got to that point when I sold out.

Q. Did plaintiff see the coil spring work after it was in the bed?

A. Yes, sir.

Q. How frequently?

A. Every day; I don't say every day, but once a day and sometimes two and three or four times a day continuously.

81 Charley wanted me to have in that contract that I would make this a practicable bed and I said, "No I will not do it, because what one man would think practical another would not,

and it is a clause for contention and you know all about it; you have seen it from the first lick that was done on it and if you are not satisfied the trade is off." He said, "It is all right; I have seen the bed and know it is a good bed." And Mr. Fry finished the contract and I gave Fry a dollar and he gave him one and he turned the key over — me, and Charley said, "If I never make a dollar out of this thing I don't want any reflection on Mr. Ringo," etc.

Q. State if you made any application for a patent upon the spiral spring-part of the bed?

A. Yes, sir.

Q. Where is that application now?

A. In Washington city on file.

Q. Did you say anything to plaintiff about that application?

A. I did.

Q. What?

A. I went to Washington city and took a model of this pattern and showed it to my attorneys and asked them if it was different from the patent we had applied for materially——

By PLAINTIFF: That is immaterial and incompetent what he told his attorneys at Washington.

Q. State what you told the plaintiff.

A. When I came back from there I told Charley what my attorneys had said.

Q. Did you tell him you had made application for that spiral spring?

A. Yes, sir.

Q. When?

A. It must have been in August I told him that and showed him the application.

Q. What did he say to it?

A. He said he guessed it was all right.

82 Q. What did you tell Mr. Wade about what your attorneys said about whether that coil spring was patentable?

A. They didn't know whether it was or not.

Q. What reason did they give, and did you tell him they said it might not be patentable?

A. They said it might be an infringement on my own invention but they said try it and if you fail it is a direct infringement on your own patent and if they allow your patent it is your own anyway.

Q. If they could not get it it would be because it was the identical improvement?

—. ——.

83 Q. Will you be kind enough to come down and manipulate this bed they plaintiff brought in here and explain to the court its shortcomings and misgivings, &c.? (Witness operates bed.) Examine it very carefully.

A. There is one thing that would improve this bed very much, that is if these castors were set out here where they were intended

to go. They are set back under the bed about four inches, right on a line with the base of this bed. There is not a folding bed in existence where the castor set back even with this pivot on the lower part. All folding beds I have noticed there is a projection of this character out here and the castor barely clears the face of this, the front face of the projection. On this bed the castors set back right there; if they were where they should be, in my opinion you could not tip this bed at all.

Q. Lower it four times up and down and see if it will tip now. (Witness operates bed.) Did it tip?

A. No, sir.

Q. When was that bed put in here—what day was it you operated it the other day?

A. I don't recollect.

Q. Did it tip then?

A. Yes, sir.

Q. That was at the commencement of this trial?

A. Yes, sir.

Q. It tipped when it was operated by plaintiff?

A. Yes, sir. I will explain why it is inclined to tip. They put this projection here; the track comes two inches this way further than it does in this bed—further to the front——

83½ Q. Distinquish the beds so the reporters will know which you mean.

A. The tracks in the plaintiff's bed, in my opinion, is two inches further towards the front than it should; that has a tendency to make the rollers bind at the back part. It would be necessary to stop the rollers entirely to make the bed tip. If the track was further this way where that roller would have free access instead of that binding appearance, the bed would come down and work right.

Q. Where are those castors in that bed now?

A. They are four inches further back than they should be.

Q. In any folding bed?

A. Yes, sir. You will notice in all folding beds the castors come flush, this way.

Q. What is the condition of the track in that bed?

A. It has a rough place in it.

Q. Where is the rough place?

A. (Operating bed.) It is right there in that track. When the bed comes down and catches, then the roller is resting on that rough place in the track; it is either that or the track being too far this way it binds it,—one of the two. If you overcome that obstacle it will never tip.

84 Q. Look at this bed and see if it does not stop right where that crack is and where that piece is riveted on, where the broken piece is riveted together?

A. I can feel the rivets. They are higher than the face of the track.

BIRT RINGO, in his examination by plaintiff's counsel, testified further as follows:

Q. Bring the bed clear down without stopping, will you? (Witness operates bed.) It tipped then, didn't it?
A. I would not call that a tip. (Continues operating bed.)
Q. Was that a tip then?
A. No, sir, I would not call that a tip. (Continues.)
Q. Was that a tip? (Operated by plaintiff's attorney.)
A. Yes, sir.
Q. I will get you to close it again and lower it four times and don't put any more weight on it than is necessary to hold it up. (Witness operates bed.) Did it tip every time?
85 A. I would not call that a tip.
Q. What do you mean by a tip?
A. That bed is very poorly made and is rubbed and chafed all to pieces and it naturally gives. If it was good and strong it would not give an inch when operating it.
Q. Awhile ago you let down and up four times and it didn't tip at all?
A. No, sir.
Q. Why was it it tipped now and didn't tip then—this time you did it the same way didn't you?
A. I don't call that a tip. That back is just a rickety shell.
Q. You did notice that the back of the bed tipped forward some as you let it down this last time; didn't it come forward?
A. I don't see that it did. I saw it when you pulled it down, yes sir it tipped a little then.
Q. I will do it the second time and you see if it tips.
A. Yes sir it did.
Q. Three times,—did it tip then?
A. Every time it goes over that rough place it tips.
Q. This is the fourth time I have pulled it down, does it tip?
A. Just as it moves over that rough place it tips.
Q. Why should it tip when I put it up and down and not when you do it?
A. Simply because when it comes to that rough place when I operate it I bring it down and don't let it tip, and when you operate it you don't hold it over that place and it tips.
Q. Does it require an expert to operate a bed of this kind?
A. An expert can do a great deal better than a man that don't know anything about them.
86 Q. Do you dispose of an expert with every bed you sell?
A. An expert will sell a great many more than a man that don't know anything about them in a furniture store.
87 Q. As to the springs on that bed at your mother's; what kind were they?
A. Do you mean the spring that operates the bed? They are coil springs.
Q. How many of them are they?

A. I don't know whether there are two or three; I think maybe three, the same as this.

Q. The tracks are the same?

A. They are made of wood.

Q. And are the rollers?

A. No sir, they are of iron. * * *

Q. You did take a model to Washington?

A. Yes sir.

Q. That was the model that I was trying to get at. The one you described last night is the one you first sent to Washington?

A. Yes, sir.

Q. That was the way you understood me?

A. Yes sir.

Q. That is the model you cannot give any description of?

A. Yes, sir.

Q. You say you afterwards took a model there?

A. Yes, sir.

Q. When?

A. In August.

Q. How was it constructed?

88 A. It was constructed with a spring on top of the track instead of underneath; on top of the bolster I mean.

Q. How many springs did it have?

A. Two.

Q. What kind of springs were they?

A. Coil springs.

Q. What was the difference between springs on top and spring under the bolster, as you say? Explain that.

A. The el-iptic spring is under the bolster and the coil spring is on top or above it.

Q. Do you mean to say the one you carried to Washington had an el-iptic spring?

A. No, sir.

Q. Then they were the same as they are arranged in that bed?

A. Yes, sir.

Q. Was there any difference between the model you took to Washington and this bed you have here?

A. No, sir.

Q. It was similar in its construction to this bed?

A. Yes, sir.

Q. What day of the month did you take it to Washington?

A. It was some time in August.

Q. What time in August?

A. It was the fore part of the month.

Q. Did you take it there yourself?

A. Yes, sir.

Q. How long had your application then been on file for the patent?

A. The patent was put in about April; March or April.

Q. In the meantime this trade between you and Wade had taken place?

A. Yes, sir.

89 By PLAINTIFF: Does this bed you have brought into the room have a slotted hinge?

A. No sir.

Q. What kind of a hinge has it?

A. A pivot hinge.

Q. Why did you change from the slotted to the pivot hinge?

A. That was done by Weber; he said he would make a bed and guarantee it to work, but he didn't see any use in using the slotted hinge—that it was more expensive and he thought the other would do.

Q. Did the model you took to Washington have the slotted hinge or pivot hinge?

A. It had a pivot hinge; but I took a couple of blocks and put them together and showed them how it would be and told my attorneys to include it in the patent. (Subject changed.) * * *

Q. What is the depth of the folding part of this bed?

A. I don't know.

Q. Will you see what it is—the part that contains the mattress—the inside depth?

A. It is about six and a half inches. There is a——

Q. I want the depth of it?

A. Well, six and a half inches.

Q. Give me the depth of the upright part?

A. About 16 inches.

Q. Can you tell me the weight of the glass in front?

A. No, sir.

Q. Can you tell me how thick it is?

A. No, sir.

Q. Do you know what kind of glass it is?

A. I do not.

Q. That is a very light mattress on that bed?

90 A. I don't know as it is.

Q. You observe that what is on the bed fills it up very full.

A. Well, the springs are up pretty high here on the bottom of it.

Q. Could you put them any lower than they are now?

A. Yes, sir.

Q. Why was that not done in the construction of this bed?

A. You must recollect this is the second bed that was ever made and you would not suppose a man would get everything right on the second bed. We paid no attention whatever to the frame of the bed.

Q. This is the same bed I believe you said that was taken away from the plaintiff with a writ of replevin?

A. Yes, sir.

Q. You have put in rollers and tramways in it?

A. No, sir; it is the same tracks it had when taken away from him.

Q. The difference in its construction is there are three springs in it instead of one?

A. No, sir; there was three springs in it the same as it is right this minute when taken away from him.

Q. You say there was but one in it when it went north?

A. That is all.

Q. Do you know under whose direction the three were put in?

A. They were not put in under any one's direction, except they were ordered to be put there; they belonged there and we intended to——

91 Q. There has been no decision yet by the Patent Department upon the application for the spiral spring?

A. No, sir.

By PLAINTIFF: We object to that.

By the COURT: That is a matter of record. Sustained.

* * * * * * *

Q. Did you ever make a statement about that bed to plaintiff that was untrue or that you didn't believe to be true at the time?

A. I never did.

Q. State if ever you at any time told Ed. Wade or any one else, Ed. in particular and Charley, that you could hang 1,000 pounds in front of that bed and it would stand up?

A. I never made any such statement in my life.

BIRT RINGO, re-examined by counsel for plaintiff, testified:

Q. Do you claim now that this bed here in court corresponds to and works in accordance with the model attached to this patent and the plans and specifications of the patent on which the patent was issued?

By DEFENDANT: We object to that because that is a matter to be determined by the court. And, it is immaterial under the contract and the proof whether it does or not.

By the COURT: I think your position is correct but I will let him answer the question.

WITNESS: I think they are equivalent (equivocal,) the same. This lets it down the same as the other and the other lets it down the same as this and the result is the same. The spring above the track and the spring below the track are equivalent.

Q. You know, as a matter of fact don't you, that this bed exhibited here in evidence that was introduced last night, as well as the walnut bed, is not made in accordance with the drawing

92 attached to the patent and the specifications connected thereto?

A. They work the same.

Q. You know this bed has no el-iptic spring?

A. No, sir.

Q. You know this bed has no cogged tramway?

A. Yes, sir.

By DEFENDANT: That has all been brought out before.

Q. Did you ever deliver three beds to Mr. Wade, as mentioned in this contract?

By DEFENDANT: We object to that because they asked him in particular about that last night.

By the COURT: I think so. I think I understand that.

To which ruling of the court plaintiff excepted and at the time saved his exception.

By PLAINTIFF: We ask that the patent be introduced in evidence.

The patent being offered in evidence reads as follows:

(See patent and specifications in appellant's brief.)

BIRT RINGO, examined by counsel for defendant, testified:

Q. You say that bed as brought into court here and the el-iptic spring are equivalent?

A. Yes, sir.

Q. And that they work on the same principle?

A. Yes, sir.

By PLAINTIFF: We object to both the question and answer because whether they are equivalent or not is not for the witness to answer.

By PLAINTIFF: I don't know whether I asked it or not that the specifications attached to the patent went along with it; but I wish it to show that the specifications are offered also with the patent in evidence.

93 By the COURT: Let the record so show.

By PLAINTIFF: I hold in my hand a certificate dated January 26, 1892, signed by the Commissioner of Patents in relation to the patent issued to Wade and Buckner, patent number 459,819, which I offer in evidence to show that no other or different application for any improvement, change or modification of the patent in evidence as tendered to plaintiff, has ever been filed or made at the Patent Office at Washington.

By DEFENDANT: We don't object to the introduction of this certificate at all, but I do object, if it is proper, to the reasons he assigns for the introduction of it.

This objection was overruled.

By PLAINTIFF: I will read it to the court. Which is as follows: (Marked Ex. "F.")

By PLAINTIFF: We ask the court now to allow the plaintiff to place upon the bed brought into court by defendant an ordinary bed-spring mattress and other usual bed clothing, and to further operate said bed, for the reason it is material to prove on the part of plaintiff that the folding bed in issue is not a successful or valuable invention; and further that it will fall or tip over in use when it is thoroughly made and used with the ordinary and necessary weight on the front of it; and for the further reason that it is proven in evidence that it is the same bed furnished by defendant to plaintiff as a model, and was afterwards taken by replevin from plaintiff

and Cauthorn, the receiver, and by Buckner turned over to defendant Ringo, and that said Ringo brought said bed into court under a notice to produce for plaintiff's evidence said bed; and because it is proven in evidence that Ringo, the defendant, has no interest in the bed, but on the contrary plaintiff is the owner of half of said bed.

94 By DEFENDANT: What they want is that it be tested in a different way from what it has been; that is they ask to take out the springs and put in different ones. The springs they refer to is the spring beneath the mattress that you make your bed on; that is all.

By the COURT: Do you say that the springs in this bed are different from the springs in that bed?

By PLAINTIFF: Yes sir, somewhat different.

By DEFENDANT: The spring has nothing to do with it and has nothing to do with the case or the invention.

95 Plaintiff's request being granted by the court, the springs are removed from defendant's bed and said bed is made up by using other mattress and bed clothing placed upon it in the place of what was upon the bed when brought into court. * * *

BIRT RINGO, being called as a witness on the part of the defendant, testified as follows:

Q. I wanted to say one thing by way of explanation. This bed is geared up very tight in order to throw up that great amount of weight put on it yesterday. In case you wanted to let it remain at that tension, it would start as easy as it did if you should lower this track. When they put on that feather bed, two comforts and two mattresses and a 43-pound spring, of course we know no bed was ever made to use with that much bedding, but this did operate very nicely with it?

Objection.

Q. That bed is hard to start now?

A. Yes sir.

Q. Explain to the court why.

A. They have geared it up from behind to such an extent——

Q. Geared it up to such an extent—that don't mean anything; what do you mean?

A. They have increased the tension on the springs. If you want that tension to remain there to be able to throw up the amount they had on it properly, in order to start it all you have to do is to lower this end of the track a little.

Q. You could let the tension out a little couldn't you?

A. Yes sir, for ordinary purposes. I had reference to its working with the extra amount of weight on it.

BIRT RINGO, on cross-examination, testified further:

96 Q. You say in order to make this bed work that easy with proper tension, let me ask, in order to make it work that easy

with the tension that is now on the spring, all that is necessary to do is to lower this end of the track here?

A. Yes, sir.

97 Q. To lower that will necessitate tearing the bed all to pieces.

A. I mean in building the bed.

Q. It could not be changed here?

A. It could be, certainly. If you wanted to build the bed to make the tension greater and have the friction the same you would simply have this end of the tramway lowered—that is, if you wanted to build an extraordinary heavy front or use a large plate-glass

Q. That would be only another way of creating friction like you created tension, would it not?

A. I don't know about that.

Q. I understood you to say to the court that if you wanted to increase the weight on the bed all you would have to do would be to lower the tramway?

A. That would be to let it start easy.

Q. Is not this stationary?

A. Yes, sir.

Q. How could you make it lower then?

A. You could mortice in that tramway and set it down.

Q. Take out the tramway and let it down that way?

A. Yes, sir; certainly it could be done.

Q. If you wanted it lighter you could raise this end?

A. No, sir.

Q. The reversing of the two principles don't work?

A. No, sir.

Q. Would it do that?

A. I don't know whether it would or not.

97½ WILLIAM D. SNYDER, a witness produced, sworn and examined on the part of the plaintiff herein, by Mr. Barker, deposes and saith as follows to wit:

Q. What is your name, age, place of residence and occupation?

A. I am 35 years of age; residence Chicago. At present I am engaged with the East Rockford Furniture Company of Rockford, Illinois.

Q. If you are familiar with the construction and operation of folding beds, state it, and state generally how long you have been so familiar.

A. Yes; I have made it my business for the last ten years inventing folding beds and perfecting them. I have taken out a number of patents and have a number of patents on application now.

Q. Can you state whether you understand the laws of their physical construction, etc.?

A. Yes, sir; I think I do; I have worked with them so much that I am familiar with the general workings of the principles of folding beds.

Q. And the principles on which they are operated?

A. Yes, sir.

Q. Have you been considered an expert on these constructions heretofore?

A. I have testified as an expert in several cases before on folding beds.

* * * * * * *

97¾ Q. State what is the object of putting any bed on the market in having it occupy a small space from front to rear as can be done conveniently.

A. Well, in the first place it occupies less room on the floor when the bed is closed. The keeping it on a smaller, narrow base makes it more sightly. It preserves the symmetry of the bed in the whole design all through. Besides a greater number of them can be loaded in a car in shipping or the like of that.

Q. Do you know the Boynton bed?

A. I do.

Q. Is that bed operated with a spring?

A. It is operated by the recoil of the spring mattress that is used in the bed.

Q. This spring in any bed is simply put in there to aid in the handling of it, is it not?

A. Yes, sir; that is the general object of the spring.

Q. What is — that prevents the Boynton bed from falling over in its operation?

A. Well, the forward part of the stationary case to which the bed is pivoted moves outward about 2 and ½ feet from the base—from the front of the base—forward bearing downwards on the floor in the operation of opening the bed.

Q. State whether the bed would fall over in use if this part of the stationary case which moves out onto the floor were removed?

A. It undoubtedly would if it were made in the same proportions that they make them now. It is designed as a brace, and so stated in their specifications, a brace to keep the bed from upsetting.

Q. State whether it is an absolute necessity to have a folding bed operated by springs to be either fastened to the wall, floor, or the base wide enough, or the bed heavy enough, or this moving brace you speak of, out into the floor, to prevent its falling over, in use.

A. I should say it would. That has been my experience in constructing beds, and also my observation, that it is necessary to use one or the other to keep it from upsetting. It is a very general custom.

98 Captain J. C. BUCKNER, a witness on the part of the defendant, being called to testify, testified as follows:

Q. State when and where you saw Mr. Wade examining that bed.

A. It was in Bryan & Ringo's hardware store.

Q. When?

A. I saw him after this oak bed was put into Bryan & Ringo's store, after it was completed; he was in there then.

Q. State what you saw him doing about it.

A. I saw him looking at it and examining it as I saw many others doing.

Q. When did you hear him talking about it if at all?

A. I heard him after that talking frequently.

Q. State some of the things you heard him say or all of them.

A. I heard him say it would knock any other bed out on earth; that was a favorite expression of his; that it was bound to take the place of weighted beds.

99 Q. State if you saw plaintiff at any time soon after this trade was made.

A. Yes, sir, I did.

Q. State what if anything he said to you about it.

A. I was introduced to him as my new partner; I greeted him as such; there was possibly 12 or 15 parties around the store. It attracted considerable attention about the trade being made. After speaking to him and shaking his hand, &c., he nudged me in the side and took me off possibly 15 or 20 feet from the crowd and said "I have a letter in my pocket; I want you to read it;" and pulling it out he said, "It is from one of the largest and wealthiest manufacturers in the country and we can soon have that bed on the market. Ringo don't know that I have got this letter, I have not showed it to him." It was from Birke & G.—of Grand Rapids, Mich., addressed to C. Wade. I said to him when reading it, "This is what made you make the trade," but he said it was not, but I said it was, that I was satisfied it was, and that he need not deny it, to which he made no reply.

* * * * * * *

Q. What bed are you talking about now?

A. This oak bed here which was in Quincy at the time, shipped there by Ringo and myself.

100 By the COURT: Go ahead and tell what you did with the bed then.

A. I went to the Wabash depot and found it in the freight depot of the Wabash railroad, and I had got Mr. Ringo in the meantime, and we went together and we saw it was not crated sufficiently to make the shipment up there and we nailed it up and I marked it "C. Wade, Chicago," and then got a transfer or freight wagon and carried it to the C. & A. railroad and gave it to Mr. Waite, the agent, and asked him to send it through as quick as possible, and he said he had a car-load of eggs going to Chicago and he would put it into that car and mark it perishable and it would go right through.

Q. Was that the last you saw of it until it came back?

A. Yes, sir.

Q. Did you have any talk with the plaintiff about the application for the patent?

A. Which application?

Q. The first one that was made.

A. Yes, sir; I had a talk with him.

Q. State what was said about and what you said about it and when it was.

A. In his store after I returned from a trip to Quincy——

Q. Before or after the trade?

A. It was before the trade.

Q. State what transpired between you about it.

A. The morning after I got back from Quincy—I went over there as he knew because he was as familiar with our business as we were ourselves—I went over there for the purpose of making an order to place some beds, and he greeted me with a "Good morning" and said "How many beds did you leave an order for;" and I walked into the store and told him we left an order for three, two different kinds, as a sample, and also ordered a model bed made; and he asked what that model was for, and then I explained to him that the application then put in at Washington was made with a grooved track and grooved roller and elliptic spring and elongated or slotted hinge, and as the bed was then and as we proposed to put it on the market it was different and I wanted this mo'el to send to Washington; as I had had some correspondence with Snow & Co there I wanted to know positively whether this bed as we had it now, was in any way in conflict with the bed we were having patented. In other words, I wanted to know this: Whether we were safe under the patent we had applied for to make this bed.

By PLAINTIFF: What are you talking about now?

A. I was trying to explain to him that in getting this patent which was applied for with the corrugated track and roller and elongated or slotted hinge—that I was not altogether satisfied whether we could put this pattern on the market as we were making it then under the same patent; or whether, if we did make it that way but what some one else could interfere with us; and I was anxious to fix it as the bed was being made then.

Q. How was it being made at that time, different from the other?

A. This bed was being made at that time with a smooth track and smooth roller and an ordinary hinge and with coil springs.

Q. The patent as applied for was how?

A. The patent as applied for had a corrugated track and roller, an elliptic spring, a slotted hinge and stirrup on each track.

100½ Q. Tell what you think of his information on folding beds?

A. I think he is the best posted man on folding beds I have ever seen or talked to.

Q. Have you seen that bed operate frequently?

A. Yes, sir.

Q. State how it works.

A. It works as well as any bed I ever saw work.

Q. State if it worked according to designs.

A. Yes, sir.

Q. Does it work easily or smoothly or how?

A. It did.

Q. State if you ever saw that bed tip?

A. I never did when properly adjusted.

Q. How frequently did you see that bed operated?

A. Hundreds of times I reckon.

Q. You spoke of seeing it tip when improperly adjusted; when was that?

A. That was the afternoon when I took that bed away from the receiver down here by the writ of replevin. Mr. Cauthorn, the receiver, was tipping it.

Q. What was the matter with it?

A. The springs were screwed up and the tension was so tight on the rollers you could not pull it down; it would not go up or down. The result was that if you put weight enough on it to pull it forward it would tip.

101 Q. When did you find out he knew so much?

A. In conversation with him.

Q. When?

A. While I loafed around there with him.

Q. Before or after the trade between them?

A. Both, before and after; more particularly before, but we have had some conversation since.

Q. Look at that letter and see if it is your signature?

(Shows witness letter.)

A. Yes sir, it is my signature.

By PLAINTIFF: This letter is dated August 4th, 1891.

By DEFENDANT: Do you propose to introduce that letter in evidence?

By PLAINTIFF: I don't know whether I will or not.

WITNESS: That is the date I shipped the bed to plaintiff.

Q. I want to know what you meant by this expression in your letter, in view of what you have testified to in regard to this matter, as follows: "As you are not as familiar as you might be with the workings of the bed, I will suggest that if there is any objection urged to any noise made by the rollers or the track when the bed is being operated, this can be obviated by a rubber band to be placed around the roller; and if there is any clicking noise made by the spring you may know it is caused by the spring, * * * all of which can be overcome in a minute," &c. If he was the best posted man in the world in regard to folding beds, why did you deem it necessary to make such a suggestion to him?

By DEFENDANT: We object to that.

This objection was sustained and to such ruling of the court plaintiff excepted and saved his exception at the time.

By the COURT: The letter is evidence of itself.

(Which is as follows:)

MEXICO., MO., *Aug* 4, 1891.

Mr. Charles Wade, care of Demine & Dierkes, Chicago, Ills.

DEAR SIR: Your telegram of last night received this a. m. and immediately upon the receipt of it I wired you that the bed had

not yet reached here from Quincy, and upon its arrival would ship same to you if you wished me to do so.

Soon after I had sent you the telegram Geo. Chase advised me of the bed being at the debot so Ringo and myself went at once to the depot and saw that the bed was all right and had it transferred from the Wabash to the C. & A. R. R. and marked same to you care of Demine & Dierkes Chicago and you will no doubt get it tomorrow (Wednesday) afternoon, certainly by Thursday morning.

Upon my return to town from the depot I again wired you that the bed had been received and shipped to you at once and sent telegram in care of D. & D., Chicago.

As you are not as familiar as you might be with the working of the bed, I will suggest that if there is objection urged to any noise made by the rollers on track when the bed is being operated, this can be obviated by a rubber band placed around the roller, and if there is any clicking noise made by the spring you can know that it is caused by the spring not hanging free or touching the rod that goes inside the spring all of which can be overcome in a minute.

The model reached here yesterday and is a dandy and we are at work now putting in the track, spring, &c., and so soon as completed Birt will start on his trip.

Nothing new here; all your folks are well I hear.

Remember my advice and not talk too much, talking has ruined many a good man.

No additional letters received since your departure.

Write me fully as you proceed on your trip what is said and the impression made by the bed.

With regards

Yours truly, BUCKNER.

102 Mrs. J. C. RINGO, a witness on the part of the defendant, testified as follows:

Q. You live here in town?
A. I do.
Q. You are the wife of Mr. Jim Ringo?
A. I am.
Q. Where does his mother live?
A. With me.
Q. What room does she occupy at your house?
A. The east room over the parlor.
Q. What kind of a bed does she have there?
A. A Ringo folding bed.
103 Q. That is the linn bed?
Q. Yes, sir.
Q. How long has that bed been there?
Q. Since the 25th of August.
Q. What is her age?
A. 72 next April.
Q. Who attends to that room and her bed?
A. She does.

Q. Does she raise and lower that bed for use?
A. She does.
Q. For constant use?
A. For daily use and sleeps in it every night.
Q. What kind of bed clothing has she on it?
A. A mattress and feather bed and bed clothing required for cold weather?
Q. How long has she used it?
A. Since the 25th of August.
Q. Have you ever used any other folding bed in your house?
A. Yes, sir.
Q. State how it is used, whether it makes a good, comfortable bed?
A. I never heard any complaint.
Q. Does it work all right?
A. It does,—without any trouble.
Q. State if you have ever lowered the bed?
A. I have frequently.
Q. State if you have ever seen Mrs. Ringo do so?
A. I have.
E. Did you ever see it tip?
A. Never.

Mrs. J. C. RINGO, on cross-examination, testified:—

Q. Do you know anything about the weight of the rear of that bed?
104 A. I know I can move the bed to sweep behind it when I want to.
Q. It is on castors?
A. Yes, sir.
Q. Do you know anything about the weight of it?
A. No, sir.
Q. Do you know what the width of the bed is?
A. I never examined it with that view, of finding out.
Q. Do you know the weight and size of the timbers of the frame?
A. No, sir.
Q. Did you know whether it was weighted in any way, with weights inside or outside of it?
A. It has a track and spring like this one.
Q. Do you know whether there is any iron in it?
A. No, sir; and I have gone behind it frequently because we have a wardrobe behind it and I frequently go to it, but I never saw any weights about it.
Q. It has a nice glass in front?
A. Yes, sir.
Q. You say the back part of it is used for a wardrobe?
A. I drove nails in it to hang her clothes on for convenience; it set catcornered in the room.
Q. That makes a three-cornered cupboard?
A. Yes, sir.

Q. It holds a good many clothes?

A. She has a few clothes hanging on it for daily use.

Q. You never examined it with a view of seeing how it was constructed?

A. I never looked at the timber; I never cared for that because if it gave satisfaction I didn't care for anything else.

105 Q. Your mother-in-law is old?

A. 72 next April. And more than that, she has a hand cripp-ed so badly, she had a broken wrist.

Q. I suppose one more delicate than she, could operate it?

A. Yes sir, my little girls seven, eight, nine and ten years old have made the bed themselves. These children last summer when their grandmother was sick went up there and pushed the bed up and made it without her knowledge.

Q. There was no danger of them letting *ti* down and it falling on them?

A. No sir, it didn't fall.

Q. And there is no danger when they get on the bed of its slipping up and catching them?

A. No sir, not much; it never has shown any signs of tipping.

Q. Do you know when that bed was brought there?

A. The 25th of August.

Q. Were you there?

A. I was and saw it brought in and put upstairs.

Q. Who brought it there?

A. My husband had it brought there.

Q. Who else came along with it?

A. Three or four men that moved us up here the day we moved to town.

Q. How many men did it take to handle it? How many men were engaged in handling it?

A. Four men carried it upstairs. I could give you their names if it is necessary.

106 (*Letters Read in Evidence by Defendant.*)

EXHIBIT A.

Office of Charles Wade, dealer in furniture and coffins, Jefferson street.

MEXICO, Mo., *July* 20, 1891.

Messrs. Berkey & Gay, Grand Rapids, Michigan.

DEAR SIR-: Please let me know by return mail if you can make the folding beds for me if I get up one that will work without weights perfectly and will stop within two inches of the floor with all the bed clothes, mattress and all in. I have the thing that will knock out all the beds on earth for the simple reason it will work without weights and that perfectly. If you cannot make the beds for me please give me the name of some factory that can or rather that you think can do it. Of course don't want any but a first-class

bed made and it will take about the same amount of material in them that it takes to make a Windsor or Phœnix. If you can do a little figuring at once and give me some idea about what they can be made for please do so and let me hear from you within ten days. You need not figure on the arrangements that work the bed, I will furnish them. If you don't mind expressing yourself would like for you to say what you think such an invention would be worth, guess you are aware that there has never been anything gotten up that would work without weights. If it is not expecting too much of you would be pleased to hear from you soon as possible.

Yours truly, C. WADE.

107 EXHIBIT B.

JULY 22ND, 1891.

Mr. Chas. Wade, Mexico, Mo.

DEAR SIR: We have your favor of the 20th inst., and in reply would say that if you have a folding bed possessing the merits you claim for it, it is just the thing we have been looking for. We went to make a folding bed when we find one that will "knock out all the other beds on earth." We are in a position to manufacture fine work and if you have the bed we shall be glad to figure with you either to make it under a royalty or in any way that will be satisfactory to you. If you have a full-sized sample bed we would like to see it. Please let us hear from your further, giving full particulars in the matter. We turn out only first-class work.

Very respectfully,

Dict. BERKEY & GAY FURNITURE COMPANY.
JNO. A. COVODE, *Sec.*

108–110 By PLAINTIFF: We close our case.

After the case was closed by both sides defendant offered to produce proof that the second application for a patent had been refused by the Patent Office on the grounds that the second was covered by the first. Plaintiff agreed to defendant's request, provided plaintiff was permitted to introduce other evidence.

The court declined to reopen the case.

The cause was then, after argument, submitted to the court for its decision on the — day of ——, 1892. During said term and on the 5th day of March, 1892, the court filed his findings, marked conclusions of law and opinion, as appear in the following instru*pmt* of writing, signed by the judge.

111 UNITED STATES PATENT OFFICE.

BIRT RINGO, of Mexico, Missouri, assignor to C. Wade and J. C. Buckner, of same place.

Folding Bed.

Specifications forming part of Letters Patent No. 459,819, dated Sept. 22, 1891.

Application filed May 14, 1891. Series No., 392,730. (No model.)

To all whom it may concern:

Be it known that I, Birt Ringo, a citizen of the United States, residing at Mexico, in the county of Audrain and State of Missouri, having invented a new and useful folding bed, of which the following is a specification. This invention relates to folding beds; and the objects of the invention are to provide a cheap and simple construction of bed that may be readily raised to a folded or lowered to an unfolded position with but little exertion upon the part of the operator, which in either position will be automatically locked against accidental displacement. Other objects and advantages of the invention will appear in the folding description and the novel features thereof will be particularly pointed out in the claims. Referring to the drawings, figure 1 is a perspective of a bed, the same being open. Fig. 2, is a vertical center longitudinal section of the bed, the same being closed or folded. Fig. 3 is a detail of the cam-shaped friction support. Fig. 4 is a detail of the connection between the casing and the side rail of the bed. Fig. 5 is a detail view of the spring-adjusting means and connections. Like numerals of reference indicate like parts in all the figures
112 of the drawings. 1 designates the opposite side walls of the casing usually employed in this class of folding beds, which are mounted upon the base or bottom 2 of the casing. These side walls or standards are connected at their rear by the head-board 3, and at their front by the cross-piece 4. 5 designates the bed bottom, which becomes the front face of the casing when the bed is folded, and will be suitably decorated or ornamented. 6 designates the foot-board, and the same as usual, connects the opposite side p-eces 7, which latter are connected at the head of the bed by means of the transverse bar 8. The rear corners of the frame or bedstead are provided with rearwardly disposed sto'-bars 9, which are designated to come into contact with stop-blocks 10, located upon the inner faces of the standards or side pieces 1 of the casing. The side walls of the casing near their lower ends are each provided with curved slots 11, which slots are metal-lined, as shown, and receive outwardly disposed pins 12, extending from the side rails of the bed frame, said pins being provided with friction rollers and are adapted to ride the slots. Similar but oppositely disposed slots 13 are formed in the side rails of the bed frame, said slots being

concentric with the pins 12 and receiving pins 14, extending from the side walls of the casing. The pins 14 are provided with friction rollers, and the slots 13 are metal-lined. In operation, taking the bed in a folded position, the first half of the downward swinging movement of the bed frame is upon the pins 12 as bearings, the pins 14 riding in the slots 13. The bedstead is thus brought to an angle of about forty-five degrees. The remaining downward movement of the bed frame is upon the pins 14, which are now arrived at the upper ends of slots 13, and the pins 12 ride to the upper ends of the slots 11. It will be obvious at once that such a construction of pivotal connection will be both
113 strong and durable, as well as noiseless and cheap. Upon the base 2 of the casing and at the center thereof is located an elliptical spring 16. This spring is preferably of the form commonly used in vehicles, and is of proper tensible strength. To the upper side of the spring is bolted, as at 17, a transverse bolster 18, in the opposite ends of which are located the depending U-shaped stirrups 19, the terminals of which are passed upwardly through suitable perforations formed in the ends of the bolster provided with adjusting nuts 20. 21 designates an inclined bar, and I employ a pair of the same. These bars are hinged at their lower ends, as at 22, to the front edge of the base 2, and have their upper or rear ends loosely supported in the stirrups 19. By means of the nuts 20 it will be observed that the rear ends of the bars may be raised and lowered, so that their normal inclination may be varied and adjusted, upon each bar 21 is mounted a toothed metal cam track 23, which track consists of the rear upwardly inclined surface 25, the same leading to a central depression 26, and at the front end an inclined shoulder 27. To the rear edge of the bed frame opposite each of the cam tracks is located a bracket 28, and in each of the brackets there is loosely mounted a peripherally toothed roller 29, said roller being designed to embrace and ride upon the cam tract 23. This completes the construction of the bed, with the exception of the usual supporting leg 30. In operation, in order to unfold the bed it is simply necessary to draw the upper end of the same downwardly, so that the loose rollers ride down the inclined face 27, and by the inclination of said face the bed is permitted to fall by gravity until the rollers reach the central depression in the cam track and move up the inclined cases 25. The momentum which the bedstead generates while the rollers are moving down the inclined faces 27, in connection with the gravity of the
114 bedstead, serves to continue the movement, the rollers passing up the inclined faces 25, which, by reason of their inclination and the force of the spring, serves as breaks and thus lower the free end of the bed gently to the floor. To return the bed, the free end of the bedstead should be elevated sufficiently to start the rollers down the inclined faces 25, and the force of the spring serves to overcome the weight of the bed, which is thus elevated within the casting. From the above it will be seen that I have improved the manner of pivotly connecting the bed frame and casting and that I have constructed a bed which may be lowered to an open or

unfolded position or raised and closed to a folded position with but very slight effort upon the part of the operator, the entire operation being accomplished smoothly and noiselessly. Having described my invention, what I claim is, 1. In a folding bed, the combination, with the casing and the bed frame pivoted at its rear ends to the side walls of the casing, of opposite toothed rollers located in brackets at the lower edge of the rear wall of the bed frame, a bow spring centrally located upon the bottom of the casing a boulster mounted on the bow spring, stirrups located in the ends of the boulster, inclined bars having their lower ends hinged to the base of the casing and their upper ends loosely mounted in the stirrups, and tooth cam tracks for the reception of the rollers, mounted on the inclined bars and provided with the inclined faces 25 at the rear ends of the bars, substantially as specified.

2. In a folding bed, the combination, with the casing and the bed frame pivoted at its rear end to the side walls thereof, of opposite rollers located in brackets at the lower edge of the rear wall of the bed frame, a bow spring centrally located upon the bottom of the casing, a bolster mounted on the spring and provided with opposite perforations at its ends, U-shaped stirrups having their terminals passed through the perforations, adjusting nuts thereon, the inclined bars having their lower ends hinged to the base of the casing and their upper ends loosely supported by the stirrups, and the cam track mounted upon the bars, adapted to receive the rollers and provided with the rear-inclined face 25 and the inclined shoulder 27, substantially as specified.

In testimony that I claim the foregoing as my own I have hereunto affixed my signature in presence of two witnesses.

(Signed) BIRT RINGO.

Witnesses:
J. C. BUCKNER.
J. T. NELSON.

THE UNITED STATES OF AMERICA.

No. 459,819.

To all whom these presents shall come:

Whereas Birt Ringo, of Mexico, Mo., has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in folding beds, he having assigned his right, title, and interest in said improvement to C. Wade and J. C. Buckner, of same place, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patents are to grant to the said C.

Wade and J. C. Buckner, their heirs or assigns, for the terms
116 of sevente-n years from the twenty-second day of September, one thousand and eight hundred and ninety-one, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-second day of September, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States of America the one hundred and sixteenth.

(Signed) CYRUS BUSSEY,
Ass't Sec. of the Interior.

(Signed) W. E. SIMOND,
Commissioner of Patents.

(*Copy of Certificate.*)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy of the instrument of writing found of record up to and including Jan'y 20th, 1892, under letters patent granted to Bert Ringo, assignor to C. Wade and J. C. Buckner, Sept. 22nd, 1891, number 459,819, "folding bed," recorded in L-ber U, page 304. Said record has been carefully compared with the original and is a correct transcript of the whole thereof.

In testimony whereof I, W. E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this the 26th day of Jan'y, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and sixteen.

[SEAL.] W. E. SIMONDS,
Commissioner.

Lebur U 44, p. 304.

117 *Assignment Before Patent.*

Whereas I, Birt Ringo, of Mexico, in the county of Audrain and State of Missouri, have invented certain new and useful improvements in folding beds, for which I have made application for letters patent of the United States, No. 392,720, filed May 14, 1891; and whereas C. Wade and J. C. Buckner, of the same place, are desirous of acquiring my interest therein and in the letters patent to be obtained therefor: Now, therefore, to all whom it may concern, be it known that for and in consideration of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, I have assigned, let, and set over, and by these presents do assign, sell, and set over, unto the said C. Wade and J. C. Buckner one-half each of the right, title, and interest in and to said invention, as fully set forth and

described in the specification prepared and executed by me preparatory to obtaining letters patent therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said C. Wade and J. C. Buckner as the assignee of all my right, title, and interest in and to the same for their sole use and behoof and for the use and behoof of their legal representatives.

In testimony whereof I have hereunto set my hand and affix- my seal this 22nd day of August, 1891.

BIRT RINGO. [SEAL.]

In presence of two witnesses:
W. W. FRY AND
JNO. J. RICKETTS.

Recorded Aug. 27, 1891.
J. F. F.
M. H.

(Here follow two diagrams & a photograph, marked pp. 118, 119, & 120.)

* * * * * * *

121 By PL'T'F: I hold in my hand a certificate dated Jan. 26th, 1892, signed by the Commissioner of Patents, in relation to the patent issued to Wade and Buckner, patent numbered 459,819, which I offer in evidence, to show that no other or different application for any improvement, change, or modification of the patent in evidence as tendered to plaintiff has ever been filed or made at the Patent Office in Washington.

By DEF'T: We don't object to the introduction of this certificate at all, but I do object if it is proper to the reasons he assigns for the introduction of it.

This objection was overruled.

By PL'T'F: I will read it to the court, which is as follows (marked Ex. "F"):

(Exhibit not set out.)

* * * * * * *

122 WADE
vs.
RINGO.

The object of this suit is to rescind and set aside a written contract between plaintiff and defendant in which plaintiff transferres and sells to defendant a stock of furniture and other goods for and in consideration of an undivided one-half interest of defendant's in an invention known as the Ringo folding bed and the letters patent applied for. The facts alleged by plaintiff in his petition why this contract should be set aside are as follows:

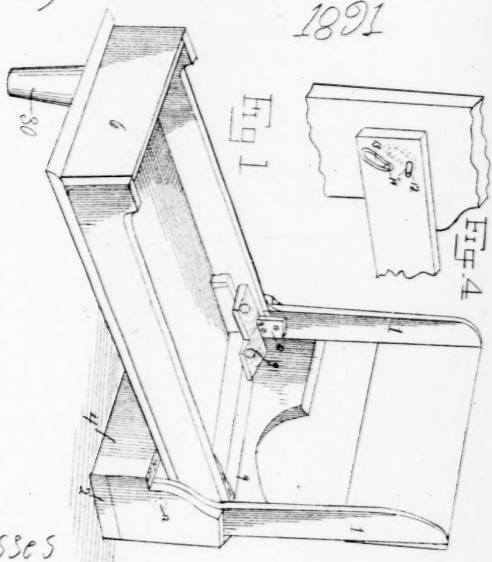
1st. That in the negotiations the defendant, for the fraudulent purpose of inducing plaintiff to buf of him his interest in said patented invention, represented to pl't'f that his said Ringo folding bed

(No Model.) 2 Sheets-Sheet 1.

B. Ringo

Hat Pins Bed

No. 459,819 Patented Sept 22, 1891



No 172 Made at Ringo's auburn p. 118

Witnesses

E. S. Dunbar Jr. By his Attorneys

W. S. Duval E. G. Snowden Jr.

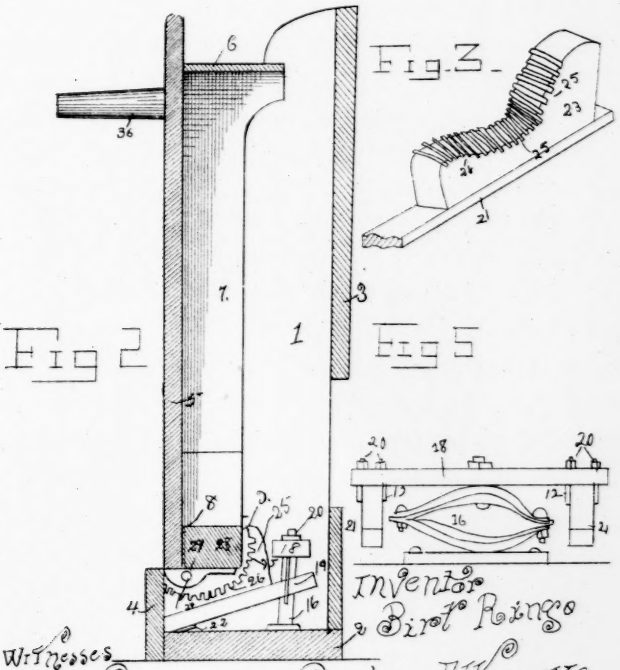
Inventor Burt Ringo

(No Model.) 2 Sheets-Sheet 2.

B. Ringo.

Folding Bed.

No. 452,819. Patented Sept. 22, 1891.



No. 172 Wade & Ringo's Adm'r. v. 117

Inventor
Birt. B. Ringo

Witnesses
E. S. Duvall Jr.
W. S. Duvall.

By his Attorneys
Baxter & Snow & Co.

No. 177
Water
$10

was and is constructed and supposed to be constructed as to its general and main parts like the said Windsor folding bed and Andrews folding bed, to stabd up like a clothes press when not in use, with a movable front constituting the bedstead, secured in an outside framework, and about of the same size as the folding beds aforesaid operated with weights, about six feet eight inches high, four feet broad, and about twenty-five to twenty-seven inches deep from front to rear at the base, which said Ringo folding bed was designed, as so represented by him, to entirely dispense with said weights, and instead thereof (for the purpose of counteracting and balancing the weight of the folding part of said bedstead, bed springs, mattresses, bedding, comforts, blankets, &c., usually used, together with a looking glass of any size desired) two spiral or coil springs are to be used, the upper end of each of said springs fastened into a cross-beam and the lower end of each of said springs so connected
123 with the back and rear end of an iron circular track that rollers secured to the bottom end of the folding part of said bed may, in unfolding and letting down of the bed, roll backward on the top side of said tracks (which are circular on the top side) and as they roll back are designed to increase the tension on said spiral springs so as to cause the increasing leverage and weight of the bed in being unfolded and let down to be equalized by the power of said springs, and also to have legs about one foot long to hold up the end of the bed when ket down, the whole object and *supposed* of said supposed improvement being to reduce the weight of the folding bed so that it may be easily moved about upon four roller castors by the housekeeper with safety, decrease the cost of construction, and lessen the costs and expenses of shipment, and thus produce a market for the sale of said Ringo folding bed, so as to in a large measure take the place of other folding beds in common use, and become a source of profit to the owner thereof.

2nd. Defendant further represented that he had applied for a patent for his pretended invention in the Patent Office of the United States, and that his application therefor was still pending and undetermined.

3rd. Defendant, intending to wrong, cheat, and defraud the plaintiff out of his said stock of goods and property, knowingly, fraudulently, and deceitfully represented to plaintiff that the said pretended invention was such an improvement on such other folding beds in common use that all said weights used in them for balancing and overcoming the necessary leverage power (of the bed in let-ing down and closing up) could and would be dispensed with by the use of his springs, tracks, and rollers, and that said springs, tracks, and rollers would completely and fully do and perform all
124 necessary work and supply the place of such weight above named in counteracting the weight and leverage of the bed and furnishings above named as necessary and usual while being let down and unfolded for use and in being folded up when not in use, and that said bed should and would be built of substantially the same kind, quality, and dimensions of lumber and materials used in said other folding beds, and further represented that the down

pull of his said springs would equal the down pull of the folding part of said bed when being opened for use, and further represented that his said bed would not when being so opened, which statement def't did not know to be true and in fact was not true, and might with perfect safety have any amount of weight added upon the bed part, even to the extent of one thousand pounds, and that it would not fall or tip over in use because, as he falsely and fraudulently stated, that the down pull of the springs in the rear would still counteract and overcome the down pull of the bed and weights in front, so it could not fall over.

These are the representations, as alleged by pl't'f, which induced him to enter into a written contract for the exchange of the plaintiff's said property for the said supposed invention of defendant and his beds, &c., on hand.

The plaintiff further alleges that all the said representations were false and known by defendant to be false at the time, and def't in truth and fact well knew at the time—

1st. That when said Ringo folding bed should be made for the same size and material of other beds with his springs, rollers, and tracks and without weights, that it would not and could not operate the ordinary weight of the front with any kind of beds and bedding thereon, nor would it operate with as much weight
125 as an ordinary bed must carry necessarily, and when so built of the ordinary weight and dimensions that it would fall and tip over in operation with or without any bed furnishings upon it; and—

2nd. That it was a dangerous and worthless dead fall and could not safely be used as a bed.

Fraud is the ground of the action, and the representations as above recited, alleged to have been made before the written contract was entered into, are the means through which plaintiff was induced to make the contract. If these representations were made by defendant to plaintiff and were or any of them material to the contract afterwards made and were relied on by plaintiff as true when in fact they were false, then the contract should not stand; but if defendant did not make such representations or any of them, or, notwithstanding defendant made them, the plaintiff relied on his own judgment, or they were not material to the contract or were not false, then the contract should stand. Courts do not undertake to make contracts, for persons may make them for themselves, voluntarily impose their own burdens, whether light or heavy to bear, and when freely and fairly assumed courts will leave them to the consequences of their own judgment, whether wisely or foolishly exercised. It is only where fraud, accident, or mistake is present that courts can undertake to cancel a contract, and that upon the theory that the so-called contract is really no contract at all, the minds of the parties never having fully met upon the proposition.

Fraudulent representations, in order to afford a ground for relief, must be of facts which then existed or had existed in distinction from an opinion, a promise, or an assumed future fact.

The first series of representations plaintiff charges the
126 defendant made, it will be observed, consisted in a description of the bed, together with an opinion of the defendant as to the value and future popularity of the same, resulting from the substitution of springs for weights.

The second is an allegation of a pre-existing fact that def't had applied for a patent for his invention, and that his application was then pending and undetermined, and this, if false, was certainly material and should warrant the cancellation of the contract.

The third, in the beginning, it was the opinion (for it can't be anything else) of the defendant that his invention was such an improvement on folding beds as would dispense with the use of weights, and next as to materials and dimensions of the bed, and then that the down pull of the springs would equal the down pull of the folding part of the bed so that the bed would not tip when being operated.

The whole controversy really grows out of the alleged falsity of the fact that the down pull of the springs was equal to the down pull of the bed proper. All other allegations of misrepresentations are minor and hang upon this. If the effect of the spring is to maintain the equilibrium of the bed when in motion, then pl't'f, in his own opinion and in that of all the expert witnesses, would have a very valuable invention, but if such is not the effect of the springs the pl't'f would have a valueless property.

As said before, the representations, outside of a warranty, upon which the law authorizes a party to rely in the making of a contract must be of a fact either then existing or pre-existing and not something to be done in the future, nor a mere opinion or inference as to the effect or result of a certain fact or facts then existing
127 or pre-existing. These facts must be, to-, *or* a concrete character as distinguished from a truth or principle. Here the facts, the springs, rollers, tracks, &c., are known to the plaintiff as well *as well* as the defendant. No fact is concealed from him as to the various parts and devices entering into the construction of the bed. Def't tells him that the result of this combination of things will be that the bed will remain stationary while being operated. Pl't'f could investigate this as well as def't. No door of knowledge is closed on him; he need not rely upon the mere opinion of def't as to how the machinery will act, for it — but an opinion at best, but having all the facts before him, could draw a conclusion from them as well as def't. If he was not satisfied with his own opinion and voluntarily chose to adopt def't's as to the effect of these facts, it was his privilege to do so, but he ought not now to complain of it. The law does not relieve one from a contract because he was mistaken*ed* in his judgment upon open, patent facts. The very life of trade is freedom of judgment. Pl't'f says he was imposed on by the false philosophy of def't—that is, that the opinions of def't as to the effects of the mechanical forces employed were erroneous, and that really is the ground of his complaint. The peculiar medico-religious views of plaintiff, though occupying his thoughts to some extent, did not interfere with his good sense in the general man-

agement of his business; and if it be a fact that he was inferior in mental vigor to def't, that amounts to nothing, as mental inequality is a law of nature and goes the world over.

If that were ground for setting aside a contract, none would stand. I think it is quite plain that the contract should not be set aside on account of the alleged fraudulent representations of def't to pl't'f before the making of the contract.

It is also alleged by pl't'f that various matters and things
128 were omitted from the contract fraudulently and wrongfully by def't. Of this there was no evidence whatever. The contract was exactly as both parties desired and intended it should be.

Although total failure of consideration was not formally pleaded by pl't'f as the cause of action, yet in negativing the truth of def't's representations he, among other things, alleges that the bed was a worthless and dangerous dead fall and could not be safely used as a bed.

A total failure of consideration is a good and complete defense to an action, outside of the defense of fraud, but mere inadequacy is not. In this case the evidence is conflicting as to the utility of the invention; but the evidence did not establish that it was a worthless dead fall or wholly worthless as a folding bed, and hence this defence is unavailable.

At the time of the making of the contract def't's application for a patent was pending and undetermined; pl't'f then became the owner of the undivided half thereof; and whether his legal letter came directly from the United States to him or indirectly from the United States through def't to him was an immaterial matter, the end to be accomplished was the vesting of the right in him, and this was done in a safe and more expeditious manner than having the title put in defendant after his ownership had ceased, and thus risk something to be done in the future, the formal assignment, which the death, disability, or refusal of def't might delay and prevent for a time, to the loss and expense of pl't'f; besides, it was the purpose and object of the agreement between pl't'f and def't to invest pl't'f then and there with an half ownership in the invention, and it was the legal duty of the Commissioner to issue the patent to the owner thereof at the time of the issuance.

129 I have treated plaintiff's allegations of fraud as true in the main and considered their legal sufficiency, but when we go to the evidence for the facts occurring before and at the time of the trade we do not find that they substantiate the allegations of pl't'f. Pl't'f was at the time of the trade conversant with folding beds, had handled them of various kinds for many years, thoroughly appreciated in common with others who were informed the great value of a bed dispensing with weights and using springs, advises and suggests changes and supposed improvements to def't during the working out of the idea, inspected the models at various times, proposed the trade first himself and again a second time, and when def't tells him he will trade pl't'f advises with his friends and gets the opinion of an expert as to the value of the invention and

throughout the whole negotiations is cautious and guarded. At the time of the trade pl't'f knew or ought to have known far more about folding beds than defendant, who was wholly ignorant of them prior to the time he began working on this invention, and it seems incredible to me, with all his light and knowledge on the subject, *the* he would accept the opinion of the opposite party in interest without question and found a trade of thousands of dollars upon it. I can't think that he did.

In conclusion, I don't think either fraud in the contract or want of utility in the invention has been shown. The bill will be dismissed with judgment for defendant and costs.

(Signed) E. M. HUGHES.

To which objection was made by plaintiff at the time. Objection overruled and exception taken.

The court then rendered the following judgment in said cause against the plaintiff:

130 "*Copy of Judgment.*"

STATE OF MISSOURI, }
County of Audrain. }

C. WADE, Plaintiff, }
vs.
BIRT RINGO, Defendant. }

Now, on this the — day of Feb., A. D. 1892, this case is called for trial and comes plaintiff, by his attorneys, John M. Barker, S. W. Bickley, and Capt. Wm. H. Morrow, and in person, and defendant, Birt Ringo, in person as well as by his attorneys, George Robertson and W. W. Fry, and the matters and things are submitted to the court, all parties answering ready for trial, and the court, after hearing the evidence introduced both by pl't'f and def't and the exhaustive argument of counsel, and the court fully understanding said matter at issue, on March 5th, 1892, finds for the defendant and dismisses plaintiff's bill.

It is *then from* considered, ordered, and adjudged by the court that plaintiff take nothing by his writ, and that defendant go hence without day, and that defendant have and recover of and from plaintiff his costs herein laid out and expended about this suit, and execution may issue for the same.

After which during said Jan. term, 1892, and on the 5th day of March, the plaintiff filed his motion in arrest of judgment as follows, to wit:

In the Circuit Court of Audrain Co., Mo., Mar., 1891.

CHAS. WADE, Plaintiff,
vs.
BIRT RINGO, Defendant.

And now comes the plaintiff and moves the court to arrest the judgment in the cause and grant a new trial herein for the
131 following reasons, to wit:

The record is not sufficient on law or equity.

The court has committed error in the record.

Because the record is against the evidence, the law, and the equity, &c.

(Signed) JOHN M. BARKER,
S. W. BICKLEY,
WM. H. MORROW,
Pl't'f's Att'ys.

Which motion was then by the court overruled, and plaintiff excepted to said ruling. (The order overruling same to appear in the record.)

The plaintiff then on same day, March 5th, 1892, during said time, within 4 days after judgment, filed his motion for a new trial in said cause; which motion is as follows:

STATE OF MISSOURI, } *ss:*
County of Audrain, }

In the Circuit Court, Jan. Adjourned Term, 1892.

CHARLES WADE, Pl't'f,
vs.
BIRT RINGO, Def't.

Now comes the pl't'f and moves the court to set aside the judgment in this cause against pl't'f and grant him a new trial herein for the following reasons, to wit:

1st. Because the court erred in sustaining def't's motion to strike out a part of the pl't'f's petition, and is so striking out a part of said petition.

2nd. Because the verdict and judgment of the court is against the evidence and against the weight of the evidence.

3rd. Because the court erred in excluding evidence offered
132 for the pl't'f.

4th. Because the court erred in admitting, over pl't'f's objections, illegal and irrelevant evidence offered by def't.

5th. Because the court erred in its finding of fact and in its conclusions of law and the equity of the cause.

6th. Because the verdict and judgment of the court ought to be for the pl't'f and not for the def't.

7th. The court erred in its ruling during the trial of this cause.

8th. There is manifest error shown by the record against the pl't'f.

9th. Because the verdict and judgment of this court is against the evidence, against the law, and against the equity of this cause.

10th. Because the court erred in overruling pl't's motion to strike out a part of def't's answer.

(Signed) J. M. BARKER,
S. W. BICKLEY,
W. H. MORROW,
Att'ys for Pl't'f.

Which motion coming on to be heard was overruled by the court on said 5th day of March, 1892; to which action of the court pl't'f objected — excepted at the time; which order overruling same to appear in record and transcript.

The pl't'f then, on said 5th day of March, made his application and filed his affidavit for an appeal of said cause to the supreme court of Missouri, which is as follows, to wit:

STATE OF MISSOURI, } *ss:*
Audrain County, }

In the Audrain County, Missouri, Circuit Court, March, 1892.

CHAS. WADE, Pl't'f, }
vs.
133 BIRT RINGO, Def't. }

And now comes plaintiff and prays for an appeal of said cause to the supreme court of this State, and for his reasons therefore he says on oath that such appeal is not taken or made for vexation or delay, but because the appellant believes that the appellant is aggrieved by the judgment or decision of this court; will ever pray.

(Signed) CHAS. WADE.

Sworn to and subscribed before me this 5th day of March, 1892.

(Signed) BEN. C. JOHNSON,
Clk Cir. Ct.

Which application for appeal was granted by the circuit court and plaintiff's appeal bond fixed at $10,000, upon which application for appeal the court made the following order of appeal and allowed the plaintiff 90 days within which to file the bill of exceptions in this cause:

STATE OF MISSOURI,
County of Audrain.

In the Circuit Court, Jan. Term, 1892.

C. WADE, Plaintiff,
vs.
BIRT RINGO, Defendant.

Now, on this 5th day of March, A. D. 1892, comes plaintiff and files herein his motion for a new trial, and on said day said motion for a new trial was overruled, and now comes plaintiff and files his affidavit for appeal. Leoon to plaintiff to fill his bond in the sum of $10,000 within 10 days from date, to be approved by the clerk of this court, and the appeal is allowed, and said motion in arrest is overruled, and leave is given plaintiff to file his bill of exceptions within 90 days from date.

Bond filed and approved March 11, 1892; appeal.

The plaintiff therefore prays the court to allow, sign, and seal this bill of exceptions, and that the same may be signed and sealed and made a part of the record, which is done this 24th day of May, 1892.

(Signed) E. M. HUGHES, [SEAL.]
Judge said Circuit Court.

Which bill of exceptions was duly filed as follows, to wit, May 26th, 1892.

BEN. C. JOHNSON,
Cl'k Cir. Ct., Audrain Co., Mo.

133¼ (*Extract from Plaintiff's Brief in Mo. Supreme Court.*)

II.

The judgment should have been for the plaintiff because the patent No. 459,819 was worthless.

III.

And because the said patent was void. The specifications show it to be void. Sec. 4888 U. S. Stat., 1875, page 954, expressly provides that the applicant shall describe the *manner of making and constructing in such full, clear, concise and exact terms, as would enable a skilled person to construct the machine.*

In Ringo's application he does not give the size, length, weight or breadth of the bed *or any piece in it.* For instance, what is the size, length, weight, &c., of the cogged track? And what is the arc of the circle? Or the *locations and arc of the circle of the slot for the movable pivot?*

See Walker on Patents (1889), sections 23 to 38, and 77 and 78 and cases cited. Bishop on Contracts (1887), sec. 70, note 1. As to void patents on defective specifications see O'Reilley *vs.* Morse, 12

Howard 62; Walker on Patents 178, and the legal inference is that such a patent is void. Grant *vs.* Reynolds, 6 Peters 218, and a sufficient specification is a condition precedent to the au-
133½ thority of the Commissioner. Seymour *vs.* Osborne, 11 Wallace, page 516.

The patent was void because it was worthless; and was no consideration. Brown *vs.* Walden, 99 Mo. 564; Baw *vs.* Bosler, 9 Mo. 850, 854.

VI.

A patentable combination must produce a new and useful result, or an old result in a more advantageous way. Stephenson *vs.* Brooklyn R. R. Co., 114 U. S. 149; 104 U. S. 310; 20 Wall. 353.

IX.

The Commissioner's determination in granting a patent does not conclude courts; patents are often granted that the courts may adjudicate questions.

Andrews *vs.* Harvey, 124 U. S. 694.
Reckendorfer *vs.* Faber, 92 U. S. 347.
Gardner *vs.* Herz, 118 U. S. 180.

134 And afterwards, to wit, on the 6th day of January, 1894, the following proceedings were had in said cause, to wit:

CHARLES WADE, App.,
v.
BIRT RINGO, Resp.

* * * * * * *

Come now the said parties, by attorneys, and after argument herein submit these causes to the court.

And afterwards, to wit, on the 24th day of March, 1894, the further following proceedings were had in said cause, to wit:

CHARLES WADE, Appellant,
vs.
BIRT RINGO, Respondent.
} Appeal from Audrain County Circuit Court.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court, here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said
135 Audrain county circuit court rendered be in all things affirmed and stand in full force and effect, and that the said respondent recover against the said appellant his costs and charges herein expended, and have therefore execution. (Opinion filed.)

Which said opinion is in words and figures as follows, to wit:

In the Supreme Court of Missouri, Division No. 1, October Term, 1893.

WADE, Appellant,
vs.
RINGO.

Statement.

This is a suit in equity to set aside a contract for fraud, etc., in which the trial court, after a full hearing, rendered a decree dismissing the bill on the merits. From that decree the plaintiff appealed in due form.

In rendering judgment on the circuit the trial judge, Hon. E. M. Hughes, delivered the following:

(Opinion of trial court is omitted here in printing. See side page 122 of this abstract.)

* * * * * * *

Opinion.

Per Curiam (BLACK, *C. J.*, BRACE and BARCLAY, *JJ.*):

Having heard arguments of counsel and duly considered the points submitted on plaintiff's appeal, we conclude that the judgment delivered by Judge Hughes is in all respects a correct treatment of the facts of this case and of the law applicable thereto. We therefore deem it unnecessary to repeat what was then said, but, approving his judgment, direct that it be affirmed.

Macfarlane, J., did not sit in this case.

136 And afterwards, to wit, on the 30th day of March, 1894, the further following proceedings were had in said cause, to wit:

CHAS. WADE, App.,
v.
BIRT RINGO, Resp.

Comes now the said appellant, by attorney, and files his motions for a rehearing herein and to transfer this cause to the court in banc.

Which said motions for rehearing and to transfer to court in banc *is* in words and figures as follows, to wit:

In the Supreme Court of Missouri.

CHARLES WADE, Appellant,
vs.
BIRT RINGO, Respondent.
Case No. 6293.

And now comes the said appellant and moves the court to grant him a rehearing in said cause for the following reasons, founded upon papers in the cause and duly submitted by counsel, decisive

of the case and have been overlooked by the court, and that the decision is in conflict with an express statute and with controlling decisions, to which the attention of the court was not called, through the neglect and inadvertence of counsel, as follows, to wit (and as hereafter may by leave of court — set out):

First. It appears from the opinion of the court that the court did not find whether the patent tendered was worthless or not.

Second. The court did not find whether Ringo complied with any part of his contract.

Third. The court did not find or adjudge whether Ringo sold to Wade the invention—the particular bed—exhibited in the court-room or some other bed.

137 Fourth. The court did not find that the patent tendered after suit brought represented or protected the invention bought by the appellant.

Fifth. The court did not adjudge whether the patent was void, of any value, or worthless.

Sixth. The court decided only on the verbal representations of Ringo and that the evidence did not establish that the "invention" (not stating which invention) "was wholly valueless as a folding bed" (pp. 396, 397), but omitted entirely to adjudge as to whether Ringo had obtained any patent for appellant which would protect that invention.

Seventh. The main question in the case is, What did Ringo sell to Wade?

It is admitted by all parties that he agreed to sell an invention of his own, of utility and value, together with "letters patent" to protect that particular invention for years to come. That question, Did Ringo do as he agreed to do? has not been decided at all.

All of which is respectfully submitted; and will ever pray.

JNO. M. BARKER AND
SAM. W. W. BICKLEY,
Attorneys for Appellant.

To Judge George Robertson and W. W. Fry, Esq.:

Take notice that the above motion will be filed in the supreme court of Mo. on or before the 2nd day of April, 1894.

BARKER & BICKLEY,
Appellant's Attorneys.

138 MEXICO, Mo., *March 29th*, 1894.

I hereby acknowledge receipt of a copy of the above motion and notice this day.

GEO. ROBERTSON,
Att'y for Respondent.

In the Supreme Court of Missouri, in Division Number One.

CHARLES WADE, Appellant,
vs.
BIRT RINGO, Respondent.

And now comes the said appellant and shows to the court that the above-entitled cause was considered and decided a Federal question was involved therein, to wit, the construction of the patent and specifications of the patent, as they appear in evidence in said cause, under sec. 4888 of the U. S. Statutes of 1875 and other statutes and laws of the United States. Wherefore the appellant prays the court to transfer said cause to the court in banc according to law.

JOHN M. BARKER &
SAM. W. BICKLEY,
Attorneys for the Appellant.

To Judge George Robertson & W. W. Fry, Esq.:

Take notice that we will on or before the 2nd day of April, 1894, file the above motion in the supreme court.

BARKER & BICKLEY, *Att'ys.*

MEXICO, Mo., *March 29th*, 1894.

I acknowledge receipt of a copy of the above motion and notice this day.

GEO. ROBERTSON,
Attorneys for Respondent.

139 And afterwards, to wit, on the 28th day of May, 1894, the further following proceedings were had in said cause, to wit:

CHAS. WADE, App.,
v.
BIRT RINGO, Resp.

Now, at this day, the court, having fully considered and understood the motions heretofore filed for a rehearing herein and to transfer this cause to the court in banc, doth order that said motions be, and the same are hereby, overruled.

And afterwards, to wit, on the 9th day of July, 1894, the further following proceedings were had in said cause, to wit:

CHARLES WADE, Appellant,
vs.
BIRT RINGO, Respondent.

Now, at this day, comes the said appellant, by attorney, and files a writ of error to the Supreme Court of the United States, and a citation directed to said respondent, citing and admonishing him to be and appear at a Supreme Court of the United States on the 26th day of July, 1894; which said writ of error is allowed and

said citation signed by Hon. John M. Harlan, associate justice of the Supreme Court of the United States.

And afterwards, to wit, on the 26th day of July, 1894, the further following proceeedings were had in said cause, to wit:

CHARLES WADE, Appellant,
vs.
BIRT RINGO, Respondent.

Comes now the said appellant, by attorney, and files his assignment of errors herein and therewith a supersedeas bond in the sum of five hundred dollars; which said bond is approved by
140 Hon. John M. Harlan, associate justice of the Supreme Court of the United States, and is made part of the record herein. Which said bond is in words and figures as follows, to wit:

Know all men by these presents that we, Charles Wade, as principal, and J. H. Bickley and J. E. Moore, as sureties, are held and firmly bound unto Birt Ringo in the full and just sum of five hundred dollars, to be paid to the said Birt Ringo, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of ——, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a supreme court of the State of Missouri, in a suit depending in said court between Charles Wade, appellant, and Birt Ringo, appellee, a judgment was rendered against the said Charles Wade, and the said Charles Wade having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to said Birt Ringo, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Charles Wade shall prosecute said writ to effect and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES WADE. [SEAL.]
J. H. BICKLEY. [SEAL.]
J. E. MOORE. [SEAL.]

Sealed and delivered in presence of—
S. W. BICKLEY.
JOHN M. BARKER.

141 Approved by—
JOHN M. HARLAN,
Justice Sup. Ct. U. S.
July 11th, 1894.
11—172

STATE OF MISSOURI, }
County of Audrain. }

I, S. M. Edwards, judge of the probate court of said county and State, certify that I am acquainted with the financial standing of John H. Bickley and Jos. E. Moore, and they are perfectly solvent and entirely good as securities on the above bond for five hundred dollars.

[SEAL.] Witness my hand and seal of office this 30th day of June, 1894.

S. M. EDWARDS,
Judge of Probate.

142 UNITED STATES OF AMERICA, *ss:*

Seal of the United States Supreme Court

The President of the United States of America to the honorable the judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles Wade, appellant, and Birt Ringo, appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Charles Wade, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if
143 judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the 26th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

(Endorsed:) Wade, pl't'ff in error, *vs.* Ringo, def't in error. Writ of error. U. S. Supreme Court. Filed Jul- 9, 1894. Jno. R. Green, clerk.

UNITED STATES OF AMERICA, *ss:*

To Birt Ringo, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30
144 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein Charles Wade is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this 26th day of June, in the year of our Lord one thousand eight hundred and ninety-four.

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

On this 29th day of June, in the year of our Lord one thousand eight hundred and ninety-four, personally appeared J. N. Stephens before me, the subscriber, the undersigned, clerk of the circuit court of Audrain county, Missouri, and makes oath that he delivered a true copy of the within citation to the within-named Birt Ringo, in said county, on this day, and, further, that the said J. N. Stephens is the sheriff of said county.

J. N. STEPHENS,
Sheriff Audrain Coun.

Sworn to and subscribed the 29 day of June, A. D. 1894.

[SEAL.] BEN. C. JOHNSON,
Cl'k Cir. Ct.

Sh'f fee, $0.50.

(Endorsed:) Charles Wade, plaintiff in error, *vs.* Birt Ringo, def't in error. In the U. S. Sup. Court. Citation. Filed Jul- 9, 1894. Jno. R. Green, clerk.

145 In the Supreme Court of Missouri.

CHARLES WADE, Appellant,
against
BIRT RINGO, Respondent.

On writ of error from the United States Supreme Court to the Missouri Supreme Court.

Assignment of Errors.

And now comes the said appellant and plaintiff in error, Charles Wade, by counsel, and says that in the record and proceedings in said cause herein there is manifest error committed to the prejudice of and against the said appellant, in this, to wit:

146 The said supreme court of Missouri erred in affirming the opinion and judgment of the Audrain county, Missouri, circuit court. It erred in recommitting the errors of said circuit court, duly complained of, as follows, viz:

In rendering judgment for respondent when it should have rendered judgment for the appellant.

The verdict is against the law and equity.

The verdict is against the evidence, the equity of the case, and the law.

The verdict and judgment of the court was against the evidence and the weight of the evidence.

The court erred in excluding the appellant's evidence.

The court erred in admitting illegal and irrelevant evidence over appellant's objections.

147 The court erred in its findings of fact and in its conclusions of law and in the equity of the cause.

The court erred in its rulings during the trial.

Because the verdict of the court and opinion shows that the court tried the cause on a mistaken theory of the law and equity.

The court erred in refusing a new trial and in overruling plaintiff's motion in arrest and for a new trial.

And the said supreme court erred further in its judgment and opinion because, notwithstanding, it was specially claimed by appellant in his petition that he was to have good letters patent

148 for the supposed invention, and admitted so to be by defendant, but alleged by him that he had complied therewith and had caused such patent to issue to appellant; and, further, that appellant in his reply thereto specially claimed that said letters patent were void, for the reason that said patent so issued had neither novelty of invention or ability of purpose, and notwithstanding the appellant showed to the court that said patent was void for insufficiency of specifications and want of model, and specially brought to said court's attention sec. 4888 of the U. S. Statutes of 1875 and numerous other laws of the United States, and notwithstanding all

which the said court in effect and substance adjudged and
149 found that defendant Ringo had complied with his contract and had furnished a good and valid patent to appellant, in all of which said court was mistaken and in error in the fact, in the law, and in equity.

The said court erred in finding in its opinion that "it is only where fraud, accident, or mistake is present that courts can undertake to cancel a contract."

It erred in adjudging the warrantees of the defendant as mere matters of opinion.

It erred in holding that "the evidence did not establish that it was a 'worthless dead fall' or wholly valueless as a folding bed, and hence this defence is unavailable."

150 It erred in holding that the plaintiff should take the "invention" without any patent to protect it.

The court erred in holding that Ringo had the right to cause the patent in evidence to be issued to Wade against the letter of the contract, and after the suit had been begun to rescind the contract or to issue it to Wade at any time.

It erred in holding that it was the duty of the Commissioner of Patents to issue said patent to the owners (or to any one).

It erred in finding that Wade, the appellant, was better able to judge of the merits of the bed and of the propriety of the trade than Ringo, and in failing to find that Wade was wholly incom-
151 petent at the time to go into such a trade.

The court erred in deciding that "the law does not relieve one from a contract because he was mistaken in his judgment upon open patent facts," and in thereby finding that the facts upon which such declaration was founded were open and patent, the contrary being true.

The court erred in stating supposed propositions of law diametrically opposed to each other, in that it found "it is only where fraud, accident, or mistake is present that courts can undertake to cancel a contract," and, further, "a total failure of consideration is a good and complete defense to an action outside of the defense of fraud."

152 The court erred in finding that the 3-coil spring bed brought into court as his model of *invention* by defendant possessed sufficient utility to form a valid consideration for the trade, and in further holding that the *patent in evidence upon a wholly different combination* was a sufficient compliance with the contract when it was delivered.

The court erred in holding that the issuance and tender to plaintiff of such patent for *one thing* was a sufficient fulfillment of a contract for *another thing*.

The court erred in this cause in declaring as the law that "it is only where fraud, accident, or mistake is present that courts
153 can undertake to cancel a contract," thus totally disregarding the mental condition of Wade.

Wherefore the plaintiff in error and appellant prays that said

judgment may be reversed, and that he may be restored to all things that he hath lost, &c.

JOHN M. BARKER AND
SAM. W. BICKLEY,
Counsel for Appellant & Pl't'ff in Error.

(Endorsed:) Charles Wade, appellant & plaintiff in error, against Birt Ringo, respondent and defendant in error. Assignment of errors. Filed Jul- 26, 1894. Jno. R. Green, clerk.

154 Endorsed on cover: Case No. 15,688. Term No., 172. Charles Wade, plaintiff in error, *vs.* R. W. Lowder and Rosa Ringo, administrators of Birt Ringo, deceased. Abstract of record. Filed Dec. 18, 1894.

Office Supreme Court, U. S.
FILED.
JAN 7 1887
JAMES H. McKENNEY,
CLERK

—IN THE—

Supreme Court of the United States.

October Term, 1896.

CHARLES WADE,
Plaintiff in Error,
—vs.—
R. W. LAWDER AND ROSA RINGO,
Administrators of Birt Ringo, Dec'd,
Defendants in Error.

172

Motion to Dismiss Writ of Error and Argument in Support Thereof.

GEO. ROBERTSON,
Attorney for Defendants in Error.

—IN THE—

Supreme Court of the United States.

October Term, 1896.

CHARLES WADE,
Plaintiff in Error,
—vs.—
R. W. LAWDER AND ROSA RINGO,
Administrators of Birt Ringo, Dec'd,
Defendants in Error.

Now come the defendants in error and move the court to dismiss the writ of error herein for the reason that under Sec. 709, R. S. U. S., 1878, no federal question is involved or could be involved as by the bill filed. This is a suit to cancel a contract and is not affected by the law of patents nor does it

grow out of the letters patent themselves as will be seen by reference to the printed abstract of record as follows:

Amended petition, pages 5 to 13.

Answer, pages 13 to 16.

Opinion of Trial Court, pages 68 to 73.

Judgment of Trial Court, page 73.

Opinion of Supreme Court, page 78.

GEORGE ROBERTSON,

Attorney for Defendants in Error.

ARGUMENT IN SUPPORT OF MOTION.

The contention of defendants in error is that the Supreme Court of the United Siates has no jurisdiction of this action, and to determine that resort must be had to Section 709, R. S. of U. S., 1878. This section is as follows:

"A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States and the decision is against their validity, or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the Constitution treaties or laws of the United States, and the decision is in favor of their validity, or where any title, right, privilege or immunity is claimed under the constitution, or any treaty or statute of or commission held or authority exercised under the United States, and the decision is against the title, right, privilege or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error."

The matter of controversy in this case grows out of the contract for the exchange of the invention for the stock of merchandise. It is simply a contract in relation to an invention which by agreement was to be patented and which was patented. The controversy turns not upon the letters patent, but upon the contract concerning them only. No right of either party to the suit under the patent laws is directly in issue. The decision does not depend upon any law of Congress relating to patents. The dispute arises solely out of the contract stated in the bill and relates simply to the patented article. In the bill the thing stated is that plaintiff's consent was procured to the contract through fraud, asks for the cancellation of the contract and the restoration of the property. As the controversy arises upon the contract, not upon the letters-patent themselves nor any act of Congress concerning patents, but the rights of the parties depend altogether upon common law and equity principles this court can have no jurisdiction.

Wilson vs. Sanford, 10 Howard, 99.

Teas vs. Albright, 13 Fed. Rep., 406.

Albright vs. Teas, 106 U. S., 613.

Magwire vs. Tyler, 47 Mo., 155.

Neither the pleadings, evidence or judgment involve any federal question such as may be raised under Section 709. The decision is wholly upon the rights of the parties under the contract alleged in the bill.

The decision was adverse to the plaintiff regardless of the letters-patent or the law of patents. Notwithstanding a Federal question may be involved before this court would have jurisdiction it must appear: first, that such question was raised and presented to the state court; second, that such question was decided by the state court, or that its decision was necessary to the judgment or decree rendered in the case, and third,

the decision must have been against the right claimed or asserted by the plaintiff in error under the laws or authority of the United States.

Murdock vs. Mayor, 20 Wal., 590.

Plaintiff claimed nor asserted any right under the United States. All the rights he claimed or asserted grew out of his contract with Ringo and depended not upon any act of Congress or authority of the United States. This is simply a suit in equity to set aside a contract for alleged fraud. This is all that it appears by the bill filed and was determined alone upon principles of equity and nothing else is essential to a final determination of the case.

"It is well settled that when the Supreme Court of a state decides a federal question in rendering a judgment and also decides against the plaintiff in error upon an independent ground not involving a federal question and broad enough to maintain the judgment the writ of error will be dismissed without considering the federal question."

Hammond vs. Johnson, 142 U. S., 73.

The general rule is that to give this court jurisdiction of a writ of error to a state court "it must appear affirmatively not only that a federal question was presented for decision to the highest court of the state having jurisdiction but that its decision was necessary to the determination of the cause and that it was actually decided or that the judgment as rendered could not have been given without deciding it."

DeSaussure vs. Gillare, 127 U. S., 216.

If the case was decided independent of the federal question, then this court has not jurisdiction.

Foster's Federal Practice, Sec. 478, 2nd Ed.

Kent's Com. Vol. I, 6th Ed., 326, note b. and authorities there cited.

New Orleans Waterworks Co. vs. Louisana Sugar Refining Co., 125 U. S., 18.

Kreiger vs. Shelby R. Co., 125 U. S., 40.

Where a suit is brought on a contract or to annul it in which a patent is the subject matter, the case arises out of or on the contract and not under the patent laws.

Dale Tile Mfg. Co. vs. Hyatt, 125 U. S., Vol. 8, Supreme Ct. Rep., 756.

Felix vs. Scharnweber, 125 U. S., 8 Sup. Ct. Rep., 759.

Unless it appears from the record that the State Court decided the question relied on to give jurisdiction and in the way required, the writ will be dismissed on motion.

New Orleans vs. Morgan, 10 Wall., 256.

Cockraft vs. Vose, 14 Wall., 5.

Steins vs. Franklin Co., 14 Wall., 15.

I respectfully submit that, for the reasons above, the writ should be dismissed for want of jurisdiction.

GEORGE ROBERTSON,
Attorney for Defendants in Error.

165-624

Office Supreme Court, U. S.
FILED.
JAN 15 1897
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

CHAS. WADE, *Plaintiff in Error*,

vs.

LAWDER AND RINGO, ADMINISTRATORS OF BIRT RINGO,
Defendant in Error.

OCTOBER TERM, 1896. NO. 172.

(15,688.)

In Error to the Supreme Court of the State of Missouri.

PLAINTIFF IN ERROR'S REPLY TO THE DEFENDANT IN ERROR.

Statements and Briefs upon the Merits and upon Their Motions to Dismiss.

JOHN M. BARKER,
SAM. W. BICKLEY,
Attorneys for Plaintiff in Error.

IN THE

Supreme Court of the United States.

NUMBER 172.

CHAS. WADE, *Plaintiff in Error,*

vs.

LAWDER AND RINGO, ADMINISTRATORS OF BIRT RINGO,

Defendant in Error.

In Error to the Missouri Supreme Court.

STATEMENT.

The defendant in error some time ago filed his motion to dismiss for want of jurisdiction, but did not in any way comply with the rules of this Court (as pointed out in our first brief, page 13), and has lately given notice to file another motion for the same purpose which is subject to the same objections as the first, and not knowing what

ought to be done with such a motion, beyond the above objections, and furthermore, the brief of defendant in error upon the merits, being almost a counterpart of his brief on the motions to dismiss, and citing the same authorities nearly in both briefs, we treat them both as one brief and argument, and reply to both in this brief:

We contend that the authorities cited by counsel for defendant in error do not support his contention either on the question of jurisdiction or on the merits, and we give below the substance of the most of said cases:

The case of Wilson vs. Sanford, 10 Haward 99, is not in point because no construction of any Federal statute was asked or necessary in this case, and further the amount in dispute was below $2,000. For these reasons only the supreme court denied jurisdiction.

The case of Teas vs. Albright, 13 Fed. Rep. 406, is not in point because the court declines to entertain jurisdiction for the reason that the plaintiff and complainant in that case had sold his patent, together with all his rights under it and was simply sueing for royalties due him from the purchaser of the patent, and the court says the action was simply for damages for the breach of a personal contract.

This case is easily distinguished from the Wade-Ringo case, because the patent law is woven into the contract itself and calls for a good patent in accordance with the law. And while that was not the only question in the case, still it was a vital question and one of the most important, so much so that it was ever present at every stage of the case, and the court made it one of the leading foundation stones on which it bottomed its judgment and deciding that Ringo had complied with his contract in deciding that the right of the

invention and the patent "was properly vested in plaintiff "in a safe and expeditious manner by a patent from the "United States" (R. p. 72).

And in this case, Albright vs. Teas, 106 U. S. 613; supreme court Rep., vol. 1, 1882-3, page 550. The pith of the question is stated in the head note so plain there can be no controversy about it, to-wit:

"Where * * * there is no issue touching the "construction or validity of the patents granted to the "appellee or their infringement, *held* that the case is not "one arising under the patent laws of the United States."

We insist this case has no bearing on the present contention except it inferentially sustains the jurisdiction in the case under consideration.

In Murdock vs. Mayor, 20 Wall 590, this Court held that it was essential to its jurisdiction that some question under the Federal statute must have been raised and presented to the State Court, and have been decided against such right claimed * * * these things appearing this Court has jurisdiction. See head notes a and b under sec. 7. We also rely on that case. In Hammond vs. Johnson, 142 U. S. 73; Sup. Court Rep., vol. 12, 141, there is nothing in the case pertinent to the present controversy, because in that case the State Court decided the controversy on a ground broad enough to dispose of the case outside of the Federal question, and so asserted.

That is not the condition of the present case.

In De Sausense vs. Gillard, 127 U. S. 215; vol. 8, Sup. Court Rep. 1053, it was simply a case where a Federal question was passed on unnecessarily.

In N. O. Waterworks Co. vs. La. Sugar Ref. Co., 125 U. S. 18; page 742, vol. 8, U. S. Rep., it was simply

decided that the Supreme court would not assume jurisdiction over an *administrative act* of a city council in laying water pipes and does not touch the present controversy.

In the case of Kreiger vs. Shelby R. R. Co., 125 U. S. 40; 8 U. S. Rep. 752, throws no light on the present controversy, because in that case the court decided the case without giving any effect to the state law complained of.

The case of Dale Tel. Mfg. Co. vs. Hyatt, 125 U. S.: vol. 8, Sup. Court Rep. 756, has no bearing on this controversy, because the complainant in that case was simply estopped by his own acts and contract from denying the validity of a reissue of a patent, and being estopped from asserting it, the door of the Federal court was closed against him for that reason only.

The case of Felix vs. Scharnwebber, 125 U. S.: 8 Supreme Court Rep. 759, is not in any way germane to the controversy, because there was no question about a patent raised, *until after the trial.* The plaintiff himself based his right to recover solely on other grounds.

After the trial the judge of the ~~trial~~ court attempted to give the Federal courts jurisdiction by a certificate; and this court denied the ~~trial~~ judge such a right, simply for the purpose of making to appear something as true, which was not true.

It is probable that the case of New Orleans R. R. vs. Morgan, 10 Wall 256, was cited by mistake as it does not appear to bear on any question raised in this case, or alluded to in the Record.

The case of Cockroft vs. Vose, 14 Wall 5, decides only that the state court must have decided the question relied on, to give jurisdiction.

The case of Maguire vs. Tyler, 40 Mo. 406; 8 Wall 650;

47 Mo. 115, was very much litigated and on the whole supports the plaintiff in error in the present controversy rather than defendant.

The facts in a nutshell (40 Mo. 406) were as follows:

Maguire filed his suit in equity claiming the land through a junior patent to Brazau, dated June 10, 1862, as against a senior patent, dated March 25, 1852, to Louis Labaume, under which defendant, Tyler, claimed.

Maguire got judgment and Tyler appealed to Missouri Supreme court, and there claimed that plaintiff's patent was a nullity because the United States had already granted the land to Labaume, defendant's predecessor. And Maguire contended that the senior patent was not good for various reasons.

The action of the board of commissioners was much involved. After lengthy and exhaustive contention, the Supreme court of Missouri held that the patent to Brazau was a nullity because the board of commissioners had no right to confirm the claim, and reversed the judgment and dismissed the bill. (40 Mo. 406.)

The plaintiff then, by writ of error, took the case to the Supreme court of the United States (8 Wall 650) where the jurisdiction of this court was brought in question, and this court held it had jurisdiction, and reversed the judgment of the Missouri supreme court and ordered the judgment of the trial court sustained. On the question of jurisdiction the head note says: "When federal questions "are directly involved in the pleadings this court will not "presume that the state court erroneously decided the "case on other grounds in order to defeat its own juris-"diction."

When this case returned to the Missouri Supreme court

for action on the mandate (Maguire vs. Tyler, 47 Mo. 115) the defeated defendant again attempted to deny the jurisdiction of this court, but the Missouri court admitted this court had jurisdiction to pass on the validity of the confirmations to Brazau and Labaume, and that the title was settled and vested in plaintiff by this court (p. 126), and evidently meant to say this court had the right to, and did pass upon the validity of the patents. At any rate, it did so pass upon them.

In Joliffe vs. Collins, 21 Mo. 338, about the only way it throws any light on the question at issue is to decide that a useless invention is not a good consideration for a note, and cites and approves the opinion of Judge Story in Lowell vs. Lewis (1 Mason 186) in defining the word "useful" to be an invention capable of use and not injurious to the well-being of society, &c.

Surely, the "invention" of Ringo does not fill the measure of the above definition as to usefulness, for of all the witnesses for the defendant, nearly, they seemed to have exhausted their knowledge on the subject by witnessing Ringo manipulate the contraption and stating it *did not fall over*.

And by Ringo himself swearing that it was so far from tipping over to the front that it was ready on the slightest provocation to rise up in front, so he could place his hand between the castors and the floor, and inferentially stating it would kick over backwards but for the wall or something to stop it, and last but not least the evidence of Mrs. Ringo, who seemed to be the only housekeeper familiar with it, who testified (Record, pages 61 and 62) that she had a bed at her home and had nails driven in the back to hang clothes, and kept it in the corner making a

caticornered cupboard, and in telling of her children making up the bed, was asked:

Q. There was no danger of them letting it down and it falling on them?

A. No, sir, it didn't fall.

Q. And there is no danger when they get on the bed of its slipping up and catching them?

A. *No, sir, not much*, it has *never shown any signs of tipping*. And she proceeded to say it took four men to carry it up stairs.

It is highly probable that the back side was made a clothes rack to add weight to keep it from pitching over to the front. At any rate we insist that the defendant's evidence alone is sufficient to show that the "invention" was too dangerous, or uncertain a contraption to be useful, especially in view of the historical fact that many people have lost their lives in the last few years by such deadfalls.

On the whole that case supports the plaintiff in error and not the defendant.

We are not able to conjecture why defendant alludes to the case of Finlay vs. Bryson, 84 Mo. 664, because it alludes only to actions of attachments, and there are no issues in the case at bar or in the record to which that case is applicable.

The case of Parker vs. Marguis, 64 Mo. 38, can have no bearing except on the question of fraud, which is not of vital importance in this case, and as no question of pleading or practice has ever arisen in this case we pass it as of minor consequence.

The case of Nauman vs. Oberle, 90 Mo. 666, is to the effect that one may have his action for fraud if he is induced to buy by false statements, but not mere matters of false

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IN THE

Supreme Court of the United States.

CHARLES WADE,
PLAINTIFF IN ERROR,
VS.
W. R. LAWDER AND ROSA RINGO,
ADMINISTRATORS OF THE ESTATE OF BIRT RINGO, DECEASED,
DEFENDANTS IN ERROR.

OCTOBER TERM, 1896. NO. 172.

In Error to the Supreme Court of the State of Missouri.

PLAINTIFF'S STATEMENT.

Brief, Points and Argument by
JOHN M. BARKER,
SAM. W. BICKLEY,
Attorneys.

(15,688.)

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PLAINTIFF'S STATEMENT OF THE CASE.

This is a suit in equity, involving the construction of certain letters patent, and the law of patents, statutes of the United States, and was brought

by the plaintiff in error to recover a stock of goods worth about six thousand dollars on the ground of fraud, breach of contract and failure of consideration, in that the defendant in error was to transfer to plaintiff in error for said goods a half interest in a supposed valuable and useful invention, to-wit: A certain coiled spring folding bed, together with good and lawful letters patent to cover and protect said invention.

Plaintiff in error contends that the patent tendered under the contract is VOID and of no utility because it is not in compliance with the Federal Statutes, (especially section 4888, statutes 1875), that said patent is worthless in every respect and does not cover or protect the model or sample bed furnished to plaintiff, or the kind sold by him. Plaintiff further claims that he never bought the letters patent tendered by defendant, or the bed described therein; and that the bed attempted to be delivered by defendant under said contract is not covered by letters patent, nor is it of sufficient value or utility to be a good consideration in equity for plaintiff's stock of goods.

Plaintiff was unsuccessful in the state Circuit court and in the Missouri Supreme court and now comes on writ of error granted by this court (see record pp. 82 and 83).

On the 27th of July, 1891, Wade and Ringo made a trade and entered into a contract whereby Wade was to transfer, and did conditionally transfer, his said six thousand dollar stock of goods and some other property to defendant, Ringo, for a half interest in his alleged invention, called "The Ringo Folding Bed," together with letters patent thereafter to be secured by Ringo, to cover

the same and any improvements thereon; Ringo also contracted to deliver to Wade three of said folding beds, then in process of construction at Heitland's factory in Quincy, Ill. (see contract; record pp. 8 and 9.) In case Ringo failed to get letters patent upon the bed so sold, he was to return all the goods not disposed of.

Before any such patent was obtained by Ringo, Wade, on the 17th day of September, 1891, began this suit. A little later Ringo got certain letters patent (pp. 64 to 68, and drawings following), and tendered the same to Wade, who declined to accept the same.

In Wade's petition he alleged that Ringo had bargained to him a bed with combination of tracks, rollers, etc., and two coiled springs in the rear, the use and purpose of which springs and combination was to counter-balance the folding part of such bed, and bedding thereon; and stand in place of weights (as used in beds operated with weights to balance the folding part of bed, and clothing) and that Ringo was to furnish a working model (p. 9.) of that kind of a bed; together with a patent thereon, and that Ringo failed to comply with his said contract, in all particulars; also alleged that the model shipped to him by Ringo & Buckner was not complete, having only one coiled spring in the rear, and further that defendant never obtained any patent for the bed sold plaintiff; but on the contrary attempted to put on the plaintiff a totally different supposed patent, and on another different and worthless folding bed from the one so bought. (p. 10.)

That the bed bought was a worthless deadfall and that the defendant never delivered the three beds made at Heitland's as he contracted to do.

The defendant, in his answer, (pp. 13, 14, 15.) pleaded

the same written contract, as set out by plaintiff; alleged he had complied with it, and had tendered to plaintiff the patent in evidence.

To which answer the plaintiff replied with a general denial, and further that the patent tendered was void for the want of novelty of invention and utility of purpose.

On the trial of the case it was shown that Ringo, the defendant in error, about February, 1891, began experimenting upon the invention of a folding bed, the main object of which was to dispense with weights, as ordinarily used to balance the bed, and bed clothing, by the use of springs in lieu of such weights. (pp. 23, 57, 62, 63.)

Wade was present at different times and observed some of these experiments. At first he did not believe that such a scheme could be successful. (Record, pp. 17 and 19.) Finally, however, he became imbued with the idea that it could be done. He also placed an exalted value upon Ringo's coiled spring supposed invention, and, possessed with that idea, he gave expression of such opinion in a letter to the Berkey and Gay Furniture company, on July 20th, 1891, and at the same time asked their opinion of the same; to which they answered that if he really had such an invention they would be glad to manufacture the bed. (See letters, pp. 59,62, 63, of record.)

The evidence further shows that Ringo's contention was, that the letters patent, and specifications thereof, as shown on pp. 64 to 68 of record, and the two drawings (No. 459,819) following, amply covered the invention which he sold to plaintiff, and that plaintiff must accept that patent and be content with it.

Ringo never made a working model like the patent

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tendered to Wade.(p. 17.) It is marked "no model." (p. 68¼.)

Ringo started to have one Webber, make a bed similar to the patent, so he swore (p. 38), but that in manipulating the same it got broken; he never accepted it and it was never finished.

This same bed was rebuilt and finished by Webber at Wade's request, after suit was begun, in the manner shown by photograph (p. 68¾), with fixed pivot, smooth circular track, and two coiled springs in the rear, as the bed was being shown and exhibited at the time of said contract, (record p. 58), instead of an elliptic spring, slotted hinge, and cogged cam track, and cogged rollers as shown in patent. The bed so built, was introduced by Wade as his evidence to demonstrate the failure of the invention, as well as the difference between the patent sold and that tendered to Wade (pp. 38 and 39). It weighed 357 pounds (p. 23) and would tip in operation (pp. 47, 48 and 49).

This bed as introduced in evidence by Wade was identically the same in plan and general makeup, as the one introduced by Ringo as his evidence, with this exception that Ringo's bed weighed fifty pounds more, (pp. 41, 50 and 58), and had three springs instead of two.

Ringo demonstrated and proved what kind of a proposed patent bed he sold to Wade, by producing as his evidence (pp. 41 and 42), before the trial court, a bed of the coiled spring pattern (pp. 50 and 58); and also testified by the mouth of his partner and witness, J. C. Buckner, that the bed as it was then being made at Heitlands—at the time of the contract—and as they proposed to put it upon the market, was in fact the coiled spring pattern.

The answer of defendant (pp. 14 and 15) also, substan-

tially states that the bed sold was the same as the ones being constructed at Heitland's, and further ERRONEOUSLY STATED IN SAID ANSWER THAT THE PATENT IN EVIDENCE was issued on "said invention," sold by defendant to plaintiff (pp. 15).

Wade was to get a two-coil spring bed (pp. 19-22). There can be no doubt about that (p. 17). The bed with one-coil spring sent by Ringo and Buckner to Wade at Grand Rapids was one of those called for in the contract, built at Heitland's in Quincy, Ill. (pp. 18, 37, 39, 57, and 60). When the same bed was brought back from Grand Rapids it was taken by writ of replevin away from Wade and Cauthorn by Buckner (Ringo's partner) and by him turned over to Ringo (pp. 25, 39, 57). It was rebuilt by Ringo, with three coiled springs in the rear, and brought into court by him, to demonstrate its utility (p. 39), and was offered by defendant in court as the bed sold by him to plaintiff (pp. 39 and 41) and weighed 409 pounds without bedding. This same bed operated badly when it came back from Grand Rapids and the tracks become broken in operating said bed on account of the tension of the springs and leverage (pp. 21 and 22). This is the bed which in operation, would according to Ringo's testimony raise up from the floor in front, so that the hand could be inserted between the floor and the castors (p. 42). It is the same bed that in order to change the weight of the bed clothing necessary from one season to another, would require some skilled workman to rebuild it, by morticing down into the beam in front, so as to let down the front of the tracks (p. 55). There is nothing in the evidence or in the patent to show how much morticing ought to be done to harmonize the bed with the weather. No patent was ever obtained on the coiled spring bed sold by defendant to plaintiff, and which said bed was offered in

evidence by both plaintiff and defendant (pp. 47. 68).

To recapitulate, the defendant traded to plaintiff a bed with two coiled springs above the beam; with fixed pivot or axle on each side; with smooth circular tracks and smooth rollers to roll on said tracks, and withal to be light of weight as other folding beds; to be without weights to balance the folding part of bed and bedding; also a good and valid patent to protect said invention.

In pretended fulfillment of said contract, Ringo delivered a model or sample bed with one coiled spring in the rear above the beam and tracks, no castors, and in bad condition (pp. 42, 55, 59 and 60.) and of the enormous weight of 409 pounds, without mattress or bedding; and without any patent on it at all. In further pretended fulfillment of his said obligation Ringo tendered Wade an alleged patent for a bed with an elliptic spring below the beam and tracks; slotted or movable pivots in a curved slot; with cogged rollers to run on a cam or irregularly curved, cogged tracks; but giving no dimensions as to the size, length, or curves of said tracks, or the arc of any of the circles entering into the proper construction of such tracks or slots, and without a measurement of the bed or a measurement of any piece of mechanism in the bed.

It is not disputed in this case, that defendant demands that plaintiff in error shall take such elliptic spring, cam tracked patent above described, for his property, as a complete compliance with his contract; which patent plaintiff refused to accept.

At the time of said contract Defendant Ringo and J. C. Buckner claimed to be partners, owning the Ringo bed, and as soon as the trade was made Buckner joined in with Ringo to help in sending the unfinished model to Wade at Grand

Rapids (pp. 37 and 57), and did all he could to aid Ringo in holding Wade to said contract, as interpreted by said Ringo; and being afraid that the bed would not prove a success in operation, he offered various suggestions to Wade as to how to make it work, viz: By using rubber tires on rollers, etc., (pp. 59 and 60). Said Buckner was afraid Wade might talk too much, and he warned him to not talk while trying to put the bed on the market (p. 60).

When it was ascertained that the bed so furnished by Ringo would not work Wade brought it back from the North; and when its faults were being exposed Buckner took it away from Wade and turned it over to Ringo (pp. 25, 39 and 59).

This same partner, Buckner, tried to prevent Webber from making and completing the bed ordered by Wade for use as evidence at the trial, and threatened Webber with prosecution if any attempt was made by him to make such folding bed (p. 35). Buckner also swore that Wade was the best posted man in folding beds he ever saw (p. 58), but gave him minute directions to meet the faults of the bed he was sending North to him, and advised him by all means to keep still and avert his impending ruin (pp. 59 and 60).

The evidence does not disclose whether he kept still about it or not; nor is it apparent that the rubber bands, or tires, mentioned and suggested by Buckner, were ever used; neither is there any mention of such a rubber contrivance in the alleged letters patent tendered as aforesaid; nor are we informed whether it is possible to use such tires in the corrugated mechanism called for in said patent.

The trial judge decided the case for defendant in error (pp. 68 and 73) on March 5th, 1892.

On the same day plaintiff filed his motion in arrest (p.

74), which was overruled and exception taken (p. 74), and within four days plaintiff filed his motion for new trial, which was overruled, exception taken. Application for appeal to the Supreme Court of Missouri made, granted, and 90 days given in which to file bill of exceptions; and bill of exceptions filed May 26, 1892 (pp. 74, 75 and 76). In due time the case reached the appellate court where it was presented and again passed upon, by that body (pp. 76, 77 and 78), adversely to the plaintiff in error, on the 24th of March, 1894.

On March 30th, 1894, plaintiff in error moved the State Supreme Court for a rehearing (pp. 78 and 79), and also moved said court to transfer said cause to said court IN BANC, which motions were overruled (p. 80).

Afterward, on application of plaintiff in error by attorney, a citation was issued by Mr. Justice Harlan in this cause (p. 83), and the writ of error herein issued by the clerk, (p. 82). Plaintiff also filed his bond, duly approved, (p. 81); also filed his assignment of errors, (p. 84), and the time being extended by this court, the record from the Missouri Supreme Court was duly filed in this court, in due time, on the 18th of December, 1894.

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POINTS.

I.

JURISDICTION OF THIS COURT.

The supreme court of the United States has jurisdiction of this case because the main questions arising upon the pleadings and the evidence, necessarily demands a decision as to the novelty and utility of an alleged invention and the validity and sufficiency of letters patent issued under the Federal statutes; especially involving section 4888, U. S. statutes, 1875, and the supreme court decisions thereon.

The plaintiff's petition and the contract embodied therein, calls for a patent—a good patent (p. 8). The defendant's answer alleges that he has complied with said contract and procured the patent (p. 15). The plaintiff in his reply alleges that said patent is VOID for want of novelty of invention and utility of purpose (p. 16).

These questions were presented to the court during the trial and discussed by counsel and court (pp. 36, 37) and the court in its opinion recognized these federal questions as being involved, and decided that the patent in evidence was issued to plaintiff in a safe and expeditious manner (p. 72) and by necessary implication asserts that it covers the bed exhibited in court; and that want of utility in invention had not been shown (p. 73). These federal questions again arose as the chief matters of contention in the supreme court of Missouri (pp. 76, 77).

It is sufficient if the record shows either in express words or by necessary legal intendment, that a federal question is involved. Crawfort vs. Branch Bank, 7 Howard, 279; Gibson vs. Choteau, 8th Wall 314; (39 Mo. 337). Insurance Co. vs. Treasurer, 11th Wall 204.

But it is not necessary to claim in express terms in the record that the laws of the United States were drawn in question. "It is sufficient to give this court jurisdiction in the cause, that the record should show that an act of Congress was applicable to the case."

Miller vs. Nichols, 4 Wheaton 311.

Nelson vs. Lagow et al, 12 Howard 98-109.

Davis vs. Pickard, 6 Peters 41-49; also 2 Peters 251 and 409; 5 Peters 257; 10 Peters 394-6; 12 Peters 134; 16 Peters 301; 18 Howard 515; 1 Cliff 433.

This is true, "Whether the state court decided right or wrong."

Gill vs. Olliver's Executors et al. 11 Howard 549.

In the case of Lessear vs. Price, 12 Mo. 12-14; 12 Howard 59-74, the contention involved the construction of an act of Congress, and a patent for land, and its effect, and the jurisdiction of the U. S. Supreme court was sustained. And the recent case of Shively vs. Bowlby, 14th Supreme Court Reporter page 548 (1894) seems directly in point in all material questions as to the jurisdiction of this court, and we submit, settles it in favor of plaintiff. In this case the following further cases are cited, towit:

Railroad vs. Schurmier, 7 Wall 272.

Packer vs. Bird, 137 U. S. 661, 11th Supreme Court 210.

Knight vs. Association, 142 U. S. 161, 12 Supreme Court 258.

The contract set out in the plaintiff's petition calling for a patent, means a good and lawful patent, and a law of Congress, towit: sec. 4888, U. S. Statutes 1875, is a part of that contract, and that contract, the patent, and the

law referred to must necessarily all be construed together. Without that necessary construction, the contract would be worthless, and the laws of the United States governing patents for inventions would be a dead letter.

THE PLAINTIFF IN ERROR HAS CLAIMED ALL THE TIME THAT HE HAD THE RIGHT TO DEMAND A VALID PATENT IN ACCORDANCE WITH THE LAWS OF CONGRESS, AS A PART OF THE CONTRACT. THE STATE COURTS HAVE BOTH DECIDED THAT HE GOT SUCH A PATENT, which they could not have done without construing sec. 4888 of the U. S. Statutes; AND THE APPELLANT STILL INSISTS THAT HE HAS NOT SUCH PATENT AND THAT THE STATE COURTS ARE MISTAKEN IN THEIR CONSTRUCTION OF THAT FEDERAL LAW. This is the most important question in the case, and cannot be intelligently decided without construing that law. To decide this case without construing the letters patent tendered under the contract, in the light of the law that authorizes their issuance, and prescribes their metes and bounds, is to not decide the case at all.

The laws subsisting at the time of making a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to, or incorporated in its terms. Holbrook vs. Ives, 7th Western Rep. (Ohio) page 291. Sec. 74, page 898, vol. 3, American and English Encly., and cases cited.

1 Anson on Cont., sec. 181, Citing (Note 11).
State vs. Allis, 18 Ark. 269.
Webster vs. Rees, 23 Ia. 269.
Dufief vs. Boykin, 9 La. Ann. 295; 7 Cowan 681;
2 Parsons Cont. 494, 500,505.

The Federal Statute is as follows:

Sec. 4888: "Before any inventor or discoverer shall

receive a patent for his invention or discovery, he shall make application therefor in writing to the commissioner of patents, and shall file in the patent office a written description of the same, and of the manner and process of making, constructing, compounding, and using it in SUCH FULL, CLEAR, CONCISE, AND EXACT TERMS as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, TO MAKE, CONSTRUCT, COMPOUND, AND USE THE SAME, and in case of a machine he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions; and he shall practically point out, and distinctly claim the part, improvement, or combination which he claims as his invention or discovery. The specifications and claim shall be signed by the inventor and attested by two witnesses. ”

The motion of defendant in error to dismiss for want of jurisdiction ought to be over-ruled or disregarded for the further reason, that it does not show affirmatively what the pleadings and proceedings disclose as to the issues; but consists of mere negations and is without any printed record filed therewith, all as required by the practice of this Court.

The writ of error granted by this Court raises the presumption of jurisdiction, and that presumption ought to abide until the contrary is properly shown by the adverse party.

A writ of error to a State Court is not allowed as of right, but upon examination of one of the judges, who is guided by what appears on the face of the record.

Mitchell vs. Commonwealth, 7 Wall, U. S. 321.

Gleason vs. Florida, 9 Wall, U. S. 779.

All Courts will take judicial notice of the laws, national and state.

Choteau vs. Pierre, 9th Mo. 3.

Ott vs. Soulard, 9th Mo, 573.

11th Indiana Rep. 398.

And it is not necessary to plead a statute in Missouri.

Wood vs. Mortman, 85th Mo. 299, and cases cited.

II.

THE PATENT NO. 459,819 TENDERED BY DEFENDANT IN ERROR IS VOID AND INSUFFICIENT BECAUSE THE SPECIFICATIONS THEREIN WERE NOT "CLEAR, CONCISE, AND EXACT" OR SUFFICIENT UNDER SEC. 4888 OF THE U. S. PATENT LAWS, TO FURNISH A GUIDE AND DIRECTIONS FOR BUILDING AND MAKING THE BED.

(a.) There is not a single suggestion or direction therein, giving the length, size, or weight of the bed, or of any piece of timber or mechanism in the bed, or of any measurement of the size, length, or width of the curved slots for the axle pins, or the arc of their circles, or the size of the rollers, or the number or size of the cogs, or of the incline of the tracks, or the arc of their circle, or cam shaped proportion, or of the size or power of the eliptic spring, nor any other fact that could be made available; so that no mechanic, however skilful, could go into his shop, pick up his tools, and make any piece of the bed under that patent, unless it would happen to be the result of his own experiment, after making, trying and inventing each piece over again.

(b.) Whether an invention be regarded as an art or a machine, the manner or process of making or using

it must be set forth in exact terms in the specifications under the act of Congress.

Seymour vs. Osborne, 11 Wallace 516.

Grant vs. Reynolds, 6 Peters 218.

Walker on Patents (1889) sec. 178.

And a failure in that regard renders the patent void.

Walker on Patents, sec. 178.

Grant vs. Reynolds, 6 Peters 218.

O'Reily vs. Morse, 15 Howard 62.

(c.) The commissioner's determination in granting a patent does not conclude courts: patents are often granted, that the courts may adjudicate questions.

Andrews vs. Harvey, 124 U. S. 694.

Reckendorfer vs. Faber, 92 U. S. 347.

Gardener vs. Herz, 118 U. S. 180.

(d.) The attempt to supply the place of the weight of a given object (counterpoised with a lever) with a spring, is an absurdity, and an impossibility, unless that spring is fastened to some immovable object, or something heavy enough to overcome the power of the lever. The patent in question and bed in evidence, are nothing but feeble efforts to accomplish that impossibility. For that reason alone, none of the contraptions proposed by Ringo were patentable and they were therefore valueless.

A patentable combination must produce a new and useful result; or an old result in a more advantageous way.

Stephenson vs. Brooklyn R. R. Co. 114 U. S. 149; 104 U. S. 310; 20 Wall 353.

III.

THE PATENT WAS VOID BECAUSE THE DEVICE WAS WORTHLESS; AND THEREFORE WAS NO CONSIDERATION FOR PLAINTIFF'S STOCK OF GOODS.

(a.) The absurdity of the principle, that the folding bed could be operated with a spring, and without weight to counterbalance the weight of the bed part and clothing, in letting it down, is fully explained by the expert, Mr. Snyder (p. 56 record). A bed operated without weights, or a heavy and cumbersome case, and with a spring to equalize the leverage of the bed in letting it down, must be fastened to the floor, the wall, or have a counteracting lever to run out on the floor in front to prevent the bed from falling over (same page). The only reason why the bed brought into court by Ringo did not fall over toward the front, was because it was broad at the base and had an immense lot of iron and timber in the construction of the case or upright part, together with the tracks and springs thereto attached, and the presence of this great weight defeats the object of the patent, towit: an improvement on other beds, on account of dispensing with the necessity of balance weights to operate them. As a specimen of other beds, the Windsor, (without its balance weights) weighs 268 pounds (p. 23). Defendant's "improved" bed weighed 409 pounds (p. 41). And while the case was confessedly no part of the invention (p. 36), yet the defendant had to build an enormously heavy case to operate his invention, instead of building an invention that would operate in an ordinary case.

(b.) As it is true that a spring cannot be used to operate a folding bed as proposed by Ringo except by greatly increasing the weight of the bed as a whole, then the

alleged invention is void for want of utility, and is no consideration for plaintiff's stock of goods.

Walker on Patents, section 84.

Wilton vs. R. R. Co., 1 Brightley's Fed. Digest 618.

Bishop on Contracts (1887), sec. 70 and note 1.

Barr vs. Bosler, 9 Mo. 850.

Brown vs. Walden, 99 Mo. 564.

Defendant's contention was the converse of the above doctrine; he claiming that: "it is a valid transaction though there is no utility in the invention." (p. 36)

There was no pretense or assertion, in the trial that the Ring-folding bed is an improvement on anything; his every effort was exhausted in attempting to prove it would not fall over to the front in operation, or that by further experiment it could be so constructed as to meet the requirements of a bed.

The weight of the evidence tended to show it was not a safe bed.

A patent is not useful if it exposes one to constant danger.

Mitchell vs. Tighlman, 19 Wall 287.

The principle of the action of the spring in this bed may be illustrated by opening and closing the blade of a pocket knife. Comparatively speaking, the blade of the knife may stand for the folding part of the bed, the handle the case and the back spring (although of different shape and differently adjusted) the spring attached to the bed case. The tension of the springs is the same in principle and the friction at the point of contact between the spring and the heel of the blade corresponds practically with the pressure at the point of contact between the rollers of the bed front and the tracks attached to the bottom of the bed case, and

while the blade of the knife is being opened to about the angle of forty-five degrees the tendency of the power of the spring is to pull the handle of the knife toward the blade (just as partly opening the kind of a bed in question tends toward pulling the upright case over toward the front) and as soon as the blade passes beyond the point of about 45 degrees the tendency then of the spring in its friction on the heel of the blade is to push on or kick the handle back away from the blade, (just as the Ringo bed is disposed to raise up from the floor in front, after the forty-five degree point is passed, so as to allow of the hand being placed between the castors and the floor).

As a matter of course, if such a bed case be not very heavy, and wide at the bottom, the weight and leverage of the folding part when being let down will necessarily pull the whole bed over to the front (if not fastened to something else) whilst the folding part is less than forty-five degrees open; and will, unless supported by a wall or some other object, have a tendency to kick over backward, after the part being lowered shall have passed the point of forty-five degrees.

The bed, "will stand an inch or three inches from the floor." (See Ringo's ev. page 42.)

IV.

THE CONTRACT WAS EXECUTORY AND VOIDABLE ON ACCOUNT OF RINGO'S FAILURE TO CARRY OUT HIS PART.

(a.) The single bed shipped by Buckner to Wade at Grand Rapids, unfinished, was in fact never delivered by Ringo to Wade: it was taken away from Wade by Buckner and by him turned over to Ringo, who kept it ever after-

wards (p. 25). Ringo denied having had anything to do with that bed between the time of making the contract and the institution of this suit; denied shipping the bed and said it was done by Buckner (p. 37). The only thing ever attempted to be delivered by Ringo was the letters patent in controversy. The contract was executory only on Ringo's part. Benjamin on Sales (2nd. Ed.), Sec. 174, 175, 674.

V.

THERE CAN BE NO CONTRACT IN THIS CASE IF THE MINDS OF THE PARTIES WERE NOT TOGETHER.

(a.) Ringo never positively stated what kind of a device he sold Wade. Wade testified positively he had the coiled spring bed in his mind and never saw or thought of the bed as shown in the patent (pp. 17, 18 and 33).

If their minds never met on that point; if in the mind of each, the contract did not cover the same device, then there was a mistake and the trade would not stand. Bishop on Contracts (1887), Secs. 313, 638 and 693; Benjamin on Sales (2nd. Ed.), Sec. 50 and note t. And contract should be cancelled. Bishop on Contracts, Sec. 830.

(b.) The plaintiff could not be compelled to take something different from his contract.

Halpin vs. Mauny, 33 Mo. App., 388, citing 61 Mo., 490, and other cases.

VI.

RINGO SOLD WADE A CERTAIN MECHANICAL DEVICE, AND NOT A RESULT OR EFFECT PRODUCED BY SAID DEVICE.

Suppose, for argument's sake, that either or both of Ringo's said supposed inventions were meritorious, the question then arises: Are the two sets of mechanical devices

shown in the Record at pp. 68¼, 68½ and 68¾, and described at page 58, one and the same? If they are not, then the letters patent tendered by Ringo to Wade do not cover the coiled spring device contracted for. There can be no doubt that Wade thought he was buying a patent on that particular mechanical combination. He never saw the corrugated cam track arrangement (pp. 17, 18 and 33).

Ringo, himself, says (p. 46) that Wade saw the coiled spring, circular track combination "three or four times a day continuously," and on same page Ringo says, he "never did have a bed with the corrugated track."

Wade certainly bought the machine he saw and which was produced in court, and not one that he never had seen.

Wade did not, as claimed by Ringo (pp. 36 and 52), buy a specific RESULT. He bought a definite and certain mechanical arrangement, which Ringo claimed would PRODUCE THAT RESULT.

Said patent, No. 458,819, specifically calls for and claims the ELIPTIC SPRING AND CORRUGATED CAM TRACKED SLOTTED HINGE device; unless it also specifically calls for and claims the COILED SPRING AND CIRCULAR TRACKED FIXED HINGE or pivot device, as a whole and in detail, then Wade has never been tendered the patent he purchased; and Ringo failed to comply with his contract in that particular.

Walker on Patents, sect. 176.

Nothing is SECURED in a patent unless it is covered by a specific claim.

Walker on Patents, sect's. 181, 185, 186.

Keystone Bridge Co. vs. Iron Co., 95 U. S. 278.

Defendant claims that one device is the equivalent of the other and that if the device shown in the letters patent in evidence, was the "equivalent" of the one

exhibited at the trial, Wade was bound to take the equivalent, instead of the thing he bought. This is repugnant to the elementary law of contracts. If defendant's contention be law, then it follows that, if Ringo had sold Wade a white horse he could compel him to accept a black mule, in discharge of contract.

It may also be stated that, "equivalent is not invention."

Walker on Patents, sect's. 36, 37.

VII.

THE TRIAL COURT, NOT UNDERSTANDING THE ISSUES FULLY, MADE THE GRAVE MISTAKE OF FORCING UPON THE PLAINTIFF THE BURTHEN OF PROVING A FACT BOTH IMPOSSIBLE, AND FOREIGN TO THE CASE, AS A CONDITION PRECEDENT TO HIS RIGHT OF RECOVERY. (See abstract pages 36, 37.)

Questions by plaintiff's counsel:

Q. I want to ask you (Wade) if you are familiar with the bed that was taken to Ringo's store and shown there?

A. Yes, sir.

Q. State to the court how much heavier the back part was than the front part?

By defendant: Objects, &c., &c.

By the Court: If it is for, &c., &c.

* * *

By defendant: The case is no part of the invention; THE INVENTION IS THE THING THAT OPERATES THE CASE, if it is necessary to have a broader base, or have it heavier behind or in front, then it only goes to show——

By the court: I think I understand you. I think if

these gentlemen can show that THE ARTICLE THAT IS PATENTED IS SO OUT OF PROPORTION WHEN CONSTRUCTED ACCORDING TO THE PATENT THAT IT HAS NO UTILITY, that goes to the VERY MERIT OF THE CASE, but if it can be of some USE OR VALUE SO CONSTRUCTED then it is of utility.

By defendant: "I think that is exactly the issue they set up in their petition the letters patent and—"

By the court: "If you can show that the bed is constructed ACCORDING TO THE PATENT IN ALL ITS PARTS AND IS THEN USELESS THAT WILL ANSWER THE CASE."

These declarations of the court taken along with the declarations in the opinions show that the State courts not only proceeded on mistaken theory of law, but also as to fact.

Although the issues were clearly drawn disputing the patent, and both parties had models in the room, as those described in the contract, and totally different from the patent as being the bed of the contract, and the courts must have known that no mechanical eye was keen enough to look into the bed of the patent without any model, and without any measurements, and understand the double acting and impossible double slot for moveable pivots, as called for in the patent along with other impossibilities, and make one like it; and yet, in the face of all these unsurmountable obstacles, the trial court decided that before the plaintiff could recover *he must by word of mouth build in the air before the mind of the court a bed like the patent and then in addition satisfy the mind of the court that such an impossibly created bed would not work*

This was the strange and unaccountable theory of fact upon which the leading issue of the case was decided by the State courts, and was a grave mistake against the plaintiff, being absolutely fatal to a just cause. By this ruling it did not make any difference: that the beds brought into

court by plaintiff and defendant, both as models, would work or would not work, the door of investigation was barred and locked by the court against the plaintiff.

VIII.

THE STATE COURTS IN THEIR OPINION (p. 70) WERE MISTAKEN AND ERRONEOUS IN MATTER OF LAW, in stating "It is only where fraud, accident or mistake is present that courts can undertake to cancel a contract," &c.

(a.) In the case at bar, there was a total failure of consideration and a total failure to comply with the contract; both of which were of the essence of the contract; and the life of the contract depended on both of these conditions; and while a just consideration of the law of either one of these propositions would have given the judgment to plaintiff they are omitted, in that thesis of the case.

(b.) The court decided (p. 71) that if it were false "that defendant had applied for a patent for his invention" it "should warrant the cancellation of the contract," and yet, although Ringo confessed at the end of the trial it had been refused (63) and the plaintiff exhibited in evidence a certificate from the patent office that no such application had been made (68) the court proceeded to find for defendant against the spirit and justice of said righteous declaration.

(c.) In the third, fourth and fifth sentences (on page 71) the court justly concludes that the chief contention over the principle of the supposed invention lies in the claim "that the down pull of the springs would equal the down pull of the folding part of the bed so that the bed would not tip when being operated" * * * "but if such is not the effect of the springs the plaintiff would have a valueless property," but then proceeds to say that because the plain-

tiff had every means open for his own investigation, "and if he was not satisfied with his own opinion and voluntarily chose to adopt defendant's as to the effect of these facts it was his privilege to do so, but he ought not now to complain of it" * * * "because he was mistaken in his judgment upon open patent facts."

There is no question about the truth of the fact in natural philosopy, that no spring, of itself, can fill the place of weight, or gravitation, as against the power of a lever; and in the light of the evidence it must be conceded that was the belief of the court, and although he finds such an invention to be of no value he says the plaintiff shall not complain because he took and adopted the opinion or declaration of Ringo as true, that the spring would perform that marvellous feat.

There is no law in that proposition. While it is true that the law allows the strong to absorb the property of the weak by giving a small compensation, there is no law that allows a contract to stand where there is *no value at all to the supposed consideration.*

The court conceded that mistake would be a cause to cancel the contract but here it retreats from that just declaration and says that if Wade adopts a false theory of defendants, although by a mistake of judgment, he must bear the loss of all his property although he gets a thing that is "valueless."

(d.) The court further decides (72) that "the evidence is conflicting as to the utility of the invention," but did not establish the fact that it was "wholly worthless as a folding bed and hence this defense is unavailable."

This finding and conclusion might be allowed to stand if touching ordinary property, but it ought not to stand

in this case for a moment, because the value of an invention consists in its superiority to others, and in the fact that the people may be induced to buy and use it in sufficient quantities to justify its manufacture. If it does not meet these requirements it is worse than worthless, and in this case it was absolutely worthless, because there was no pretense that any patent could be gotten for it, or that anybody else would manufacture it, or that any one would have any protection in manufacturing it.

IX.

THE STATE COURTS ERRED IN DECIDING THAT THE INVENTION WAS NOT WHOLLY WORTHLESS, and further in deciding that "the right of that invention" sold, "was properly vested in the plaintiff in a safe and expeditious manner by a patent from the United States." (p. 72.)

(a.) For the reason that Wade did not buy that patent or any such invention as is described therein, and because the patent is void for the reasons above stated.

X.

It may be that the Court was justified in finding against the charge of fraud, but there certainly was some reasons for suspecting and charging it; enough with other facts to show that the trade was an unfair one and ought not to stand in equity. Wade relied on Ringo (page 24) and Ringo deceived Wade as to the principle of the invention, in asserting that the spring could be so adjusted as to supply the place of weights, (it was the defendant who put Wade's letter in evidence confirming that view of the invention, (62), it was also the finding of the Court (71)) also as to Ringo assuring Wade (19) that all the

lumber in the rear of the case, might be dispensed with and the bed could not be tipped, and notwithstanding this statement he brought into Court for exhibition a bed the back of which weighed 123 pounds more than the ordinary back of other beds, the only objection to which was their weight; and Ringo's supposed invention was to lessen, instead of increase the weight. And further deceived Wade as to the kind of a patent he would get for him; and as to delivering a finished model; and Ringo's partner, Buckner, took an active part in hurrying the worthless model on to Wade; in taking it away from him and Cauthorn as soon as he got back, to prevent it being exposed as to its faults; and in attempting to prevent Wade from getting the bed made for evidence at Webber's. These facts justify the conclusion that Ringo and Buckner were acting together to get, and retain Wade's large stock of goods, without rendering any consideration for the property.

And Wade never got any consideration whatever for his property.

XI.

THE STATE COURTS WERE MISTAKEN IN CLASSING RINGO'S STATEMENTS AS "EXPRESSIONS OF OPINION," and not "representations to be relied on in making a contract."

Because they were statements of alleged existing facts.

Peffley vs. Noland, 80 Ind. 164.

Iowa Economic Heater Co. vs. American Co., 32 Fed Reporter, p. 735. Cited at page 640, Vol. 8, Am. and Eng. Encly.

Although the patent in evidence was assigned by Ringo before its issuance by the government, without plaintiff's knowledge or consent and the patent itself was issued directly to Wade and Buckner (instead of to Ringo and Buckner) also without Wade's knowledge or consent, he in his petition (page 12) offers to reassign it, or allow a decree reinvesting its complete title in defendant.

XII

For the foregoing reasons the judgment of the state courts ought to be reversed; the contract rescinded; the property restored to Wade; and final judgment rendered here for plaintiff in error.

JOHN M. BARKER,
S. W. BICKLEY,
Attorneys for Plaintiff in Error.

December, 1896.

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(15688.)

NO. 172.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

Charles Wade,
Plaintiff in Error,
vs.
R. W. Lawder and Rosa Ringo,
Adm'r's of Birt Ringo, Dec'd,
Defendants in Error.

Brief of Defendants in Error.

W. W. FRY,
Attorney for Defendants in Error.

Received Copy of within Brief this
January 20th 1897
Jno W W Brooks
Atty for Plaintiffs in E

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BRIEF.

I.

This suit is here on writ of error to the Supreme Court of the State of Missouri. This court can therefore only review the decision of the state court on the question or questions mentioned in section 25 of the judiciary act, sec. 709 R. S. of U. S., 1878.

Pollard vs. Kibbe, 14 Pet. 363.
Rector vs. Ashley, 6 Wall. 142.

II.

If this court, as we contend, has no jurisdiction,

because no federal question is involved, it can render no other judgment than one dismissing the writ.

Scott vs. Sandford, 19 How. 393.

III.

When a want of jurisdiction is patent, or can be readily ascertained by an examination of the record in advance of an examination of the questions on the argument of the merits, this court will entertain and act upon a motion to dismiss for want of jurisdiction.

Semple vs. Hagar, 4 Wall. 431.

Want of jurisdiction is so apparent, even on the face of plaintiff's assignment of errors (abst. pg. 4), our motion should be sustained. Plaintiff's "errors relied upon" do not present any federal question.

IV.

It is not claimed by plaintiff that any federal question is involved in this case unless it is some question under a statute of the United States pertaining to the issuing of a patent from the patent office. But under sec. 709 R. S. of U. S. 1878, the "judgment or decree" of the state court must "draw in question the validity" of such *statute* in order to give this court jurisdiction in this case. Now, the validity of no statute is drawn in question by the decision of the state court nor by any of the pleadings in this cause, nor does plaintiff's "errors relied upon" (abstract pg. 4) claim that the validity of any statute is drawn in question. This being true this court has no jurisdiction. The only claim of a federal question involved is the statement of plaintiff in error in his assignment of errors, pg. 4 of record, subdivision T, "the question of the validity, utility and value of the *letters patent* in evidence." This does not draw in question the validity of any statute.

(*a*) Yet, if the question of "the validity, utility and value of the letters patent in evidence" (abst. pg. 4) was a question for this court it cannot be inquired into in this case. The federal question claimed to be raised in the record will be considered here as it comes from the state court.

Melendy vs. Rice, 94 U. S. 796.

A state court has no jurisdiction and cannot set aside a patent; it is exclusively within the original jurisdiction of the federal courts.

A patent can only be impeached for fraud in obtaining issue by proceedings to *set aside*.

Eureka Co. vs. Bailey Co., 11 Wall 488.

No action can be sustained to set aside a patent except in the name of the government, unless when two patents have been granted for same thing to different individuals.

Mowry vs. Whitney, 14 Wall. 434.

(*b*) Again, the state court could not question the validity of the letters patent.

Seymour vs. Osborne, 11 Wall. 516.
Smith vs. Goodyear, 93 U. S. 486.

Letters patent are evidence of the novelty and utility of the invention.

Lehnbeuter vs. Holthouse, 105 U. S. 94.

Letters patent raise presumption that all prerequisites to their issue have been complied with.

Philadelphia R. R. Co. vs. Stimpson, 14 Pet. 448.

We insist that plaintiff in this action in equity in a state court to annul a contract wherein he purchased certain letters patent could not question the validity of the

letters patent, and if he could that controversy did not involve the validity of a statute or any federal question giving this court jurisdiction.

What plaintiff contracted for was certain letters patent applied for. Record pgs. 8 and 9. Plaintiff's action was to annul this contract. See petition, record pgs. 5 to 13.

V.

In the case before us the record from which we are to determine whether a federal question is involved cannot embrace more than the petition, answer, reply and the decision of the state court. The record does not contain a federal question embraced within sec. 709, R. S. of U. S., 1878, giving the court jurisdiction. On writ to state court no question not raised in that court will be heard here.

Lytle vs. Arkansas, 22 How. 193.
Hamilton Co. vs. Mass., 6 Wall. 632.
Santa Cruz Co. vs. Santa Cruz R. R., 111 U. S. 361.

This court cannot examine the judgment unless the record shows that a federal question, necessary to the determination of the cause, is involved.

Williams vs. Norris, 12 Wheat. 117.
Boughton vs. Ex. Bank, 104 U. S. 427.
Brown vs. Colorado, 106 U. S. 95.

The record must show, either by express words or necessary legal intendment, that one of the questions mentioned in sec. 25 (sec. 759, R. S. of U. S., 1878) *was decided* by the state court.

Crawford vs. Branch Bk., 7 How. 279.
Gibson vs. Chouteau, 8 Wall. 314.

There is no jurisdiction when the federal question was first raised on argument in the highest state court on review of decision below, in which it was not raised by pleadings.

Parmelee vs. Lawrence, 11 Wall. 36.

To give jurisdiction it must appear that the decision of the federal question presented to the state court was necessary to the decision and *was actually decided*, and without deciding it judgment could not have been given.

Rector vs. Ashley, 6 Wall. 142.
Brown vs. Atwell, 92 U. S. 327.
Chouteau vs. Gibson, 111 U. S. 200.

When record shows on its face that a federal question was not necessarily involved, and does not show that one was raised, this court will not go outside of the record to ascertain whether one was decided.

Moore vs. Mississippi, 21 Wall. 636.

A decision construing but not deciding the *validity* of a statute under the United States constitution is not reversible here.

Lawler vs. Walker, 14 How. 149.

VI.

The utility of the invention, the consideration, what the contract embraced, whether it was complied with or not, what the invention covered, the fairness or unfairness of the contract, whether the parties complied with contract or not, the weight of the evidence, etc., reviewed and discussed by plaintiff in his "errors relied upon" and his brief and argument are matters with which this court has nothing to do and are not for the consideration of this court. The state alone must try such issues. Is there a federal question involved and if so has the state

court in its decision properly decided the same, is the only issue, on a writ of error to a state court, and the only inquiry here.

We respectfully submit that the writ should be dismissed under

Scott vs. Sandford, 19 How. 393.

W. W. FRY,
Attorney for Defendants in Error.

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(15688.)

No. 172.

IN THE

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CHARLES WADE,
Plaintiff in Error,
—vs.—
R. W. LAWDER AND ROSA RINGO,
Administrators of Birt Ringo, Dec'd,
Defendants in Error.

Statement, Points, Authorities and Argument of Defendants in Error.

GEO. ROBERTSON,
Attorney for Defendants in Error.

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STATEMENT BY DEFENDANTS IN ERROR.

This is a suit in equity begun by plaintiff September 17th, 1891, in the Audrain Circuit Court, State of Missouri. Its purpose is to rescind a contract of sale or rather exchange of values and has numerous other features incident to it of an equitable character.

Plaintiff's petition will be found in Abstract of Record, page 5, *et seq*, as well as all the other pleadings. The answer, page 13.

The defendant, Ringo, is the inventor of a folding bed, known as The Ringo Folding Bed, and upon which he procurred letters patent, and the plaintiff was a dealer in furniture, folding beds, &c., and was engaged in the undertaking business. These two men were of long acquaintance and were engaged in business; Ringo in the hardware business, on the same street in Mexico, in close proximity, when Ringo, who is of an inventive turn of mind, conceived the idea of inventing a folding bed. Defendant was engaged several months in experimenting, making models and devising different plans by which to complete his invention, and during all this time advised with plaintiff, showing him his models, received suggestions from plaintiff and also took into his confidence Capt. J. C. Buckner. An arrangement was entered into by which Capt. Buckner was to furnish the necessary means with which to procure the patent and the invention should be owned by Ringo and Buckner in equal shares.

During the time that Ringo was working upon his plans and models he made four different models all working generally upon the same principle but in details somewhat differing. Finally, on May 14th, 1891, defendant filed his application with specifications for a patent on his invention which was pending till September 22nd thereafter, when the patent was granted by the U. S. Government. Defendant in the meantime made a change in the plan as submitted for a patent, changing the spring by which the frame was operated from beneath the bolster to above it, thereby operating the spring from above instead of below, as will be seen by examining the evidence in the case, but these springs are mechanical equivalents. There was no change in any part or parts of the invention that were not known to the plaintiff as he was from the beginning to the end in consultation with defendant and Capt. Buckner advising, suggesting, &c.

Finally, after the model was made, from which the application for a patent was designed and which worked well, plaintiff accepted the agency for the sale of the beds at Mexico, and Ringo and Buckner begun the manufacture of the beds after the plan of some patterns they had made, and all of these business adventures were well known to the plaintiff.

Plaintiff having been for a number of years engaged in the furniture trade and the handling of folding beds, having become more or less a specialty of his, he concluded he would like to own the invention and commenced making an effort to purchase Ringo's remaining interest in the invention. Plaintiff actually pursued the defendant for several weeks trying in some way to purchase his interest and finally proposed to trade his stock of furniture for the invention.

This trade was off and on between the parties for several weeks, plaintiff in the meantime, not satisfied with his own judgment upon the merits of the invention, submitted it to a number of experts who examined it and pronounced it with merits. These examinations were had unbeknown to defendant and he went further and partially engaged with manufacturers of furniture in the North to manufacture the bed when he should have accomplished his purpose in procuring the invention.

On July 27th, 1891, the trade between plaintiff and defendant was consummated and the following written contract was entered into between them, to-wit:

"Whereas, B. Ringo, of Mexico, Missouri, has invented a new folding bed, known as the Ringo Folding Bed, for which he has made application for a patent for the United States of America in his name, and whereas said B. Ringo owns an undivided one-half of and in said patent with one J. C. Buckner, of Mexico, Missouri; now be it known that the undersigned B. Ringo has this day sold and does hereby sell and assign to C.

Wade, of Mexico, Mo., all of his said undivided one-half interest in said invention, and the letters patent applied for and to be issued to said B. Ringo, for and to said 'Ringo Folding Bed,' and said B. Ringo obligates himself to assign his undivided one-half interest in said letters patent to said C. Wade, as soon as same is issued by and at the patent office of the United States, in such manner as any additional assignment of the same may be necessary, other than this writing, to convey to said C. Wade an undivided one-half interest in said invention and letters patent. And said B. Ringo does hereby further sell and assign to said C. Wade my undivided one-half interest in all patterns and all of said Ringo Folding Beds completed or being constructed at J. H. Heitland's in Quincy, Illinois.

"For and in consideration of the sale and transfer of the above undivided one-half interest in said invention and letters patent, said C. Wade does hereby sell, transfer and deliver to said B. Ringo his entire stock of furniture, coffins, fixtures, one furniture wagon, two hearses and three sets of harness, with said wagon and hearses, said stock of furniture being the same now in the building occupied by said C. Wade on Jefferson Street in Mexico, Mo., which said stock of furniture, fixtures, coffins, wagons and hearses, harness, &c., is this day delivered by said C. Wade to said B. Ringo. Said B. Ringo further obligates himself to assign and transfer for no other or further consideration than herein named, any further patent or improvement on said "Ringo Folding Bed," or other folding bed that he may obtain letters patent for at any time in the future.

"If said letters patent by this application or other or different application should for any cause not be issued to said B. Ringo for said Folding Bed, then said B. Ringo hereby obligates himself, when it is definitely known that said letters patent will not be issued, if at all, to return to said C. Wade said stock of furniture, fixtures, wagons, hearses and harness with

the stock of furniture as full as near as practical as it now is, and less the wear and tear of said fixtures, wagons, hearses and harness from use.

" But it is understood if such transfer should for said cause be necessary, said B. Ringo is to retain all proceeds of sales made by him in said furniture business, and said C. Wade to retain proceeds of sales of such folding beds as he may make during that time.

Witness our hands at Mexico, Mo., this July 27th, 1891.
[Signed.] B. RINGO,
C. WADE."

When this contract was completed the plaintiff turned over to defendant all of the property mentioned and the defendant transferred to plaintiff his interest in the invention and some beds then in process of manufacture at Quincy, Illinois.

Defendant made a written assignment of his interest in the invention which was recorded in Washington, so when the patent was issued it was issued direct by the Government to this plaintiff, C. Wade and J. C. Buckner, because they were the sole owners and were entitled to it.

The specifications upon which the patent was issued were looked over by plaintiff before sent and when any change was concluded upon any of the parts, plaintiff was advised of it, consulted with about it, and made as usual his suggestions concerning it. In fact, plaintiff might in truth be called the godfather of the Ringo Folding Bed in all its parts.

Wade and Buckner, after the trade, desired to make some change in the springs and defendant filed an application for a patent on that as requested by the owners, Wade & Buckner. This was also seen by plaintiff and approved by him, and he advised and made his usual suggestions concerning it. This application was pending when this case was tried.

The plaintiff pleads fraud and deception in the making of the contract, incapacity in himself and want of consideration.

These are the three prominent features of the contest with a great deal more inserted that may well be regarded as useless nonsense. The defendant relies on the contract with a complete performance of the same on his part and that plaintiff did not offer to cancel the contract and place the defendant in the condition he found him at the time of the trade, before commencing his suit.

In the trial of the case the plaintiff admitted his intimate knowledge with the folding bed business and that he had been consulted and made suggestions concerning the invention and that he was well acquainted with the invention in question, &c., &c. In fact, there was as to the material matters in the case no conflict of evidence between the evidence of the plaintiff himself and that of the defendant.

The plaintiff proved in evidence that he was possessed of some peculiar medico-religious views, but there is no evidence in the case that he was otherwise than an excellent business man, and that he was very shrewd will be observed from some of his conduct resorted to to aid him in his case.

Two beds were brought into the court room as evidence in the case. One by the plaintiff and the other by the defendant at the request of plaintiff. The one brought in by plaintiff was an old model made by the carpenter in Mexico on Mr. Ringo's order and had never been accepted by Ringo and Buckner because the carpenter had never completed it and was spoiled in the making. This was put together by plaintiff in such an awkward and crude manner that when using it in the court room that it did not operate well, but the causes of this failure to operate is fully explained by the evidence in the case, which also discloses an effort on part of plaintiff to devise a bed that would not work and thereby show that the invention was use-

less. On the other hand, the bed that was produced by defendant, at plaintiff's request, operated well and served to demonstrate the utility of the invention.

Both of these beds were operated in the presence of the court and a full discription of their operations, &c., the different tests of practical use to which they were put, appear fully in the evidence in the case.

The Circuit Judge, after a patient hearing of the case for several days, gave judgment to the defendant and upon the rendition of judgment gave a written opinion which is incorporated into this statement and which is as follows:

WADE
vs.
RINGO.

The object of this suit is to rescind and set aside a written contract between plaintiff and defendant, in which plaintiff transfers and sells to defendant a stock of furniture and other goods for and in consideration of an undivided one-half interest of defendant's in an invention known as the Ringo Folding Bed and the letters patent applied for. The facts alleged by plaintiff in his petition why this contract should be set aside, are as follows:

1st. That in the negotiations the defendant, for the fraudulent purpose of inducing plaintiff to buy of him his interest in said pretended invention, represented to plaintiff that his, said Ringo Folding Bed, was and is constructed and supposed to be constructed as to its general and main parts like the said Windsor Folding Bed and Andrews Folding Bed, to stand up like a clothes press when not in use, with a movable front, constituting the bedstead, secured in an outside frame work and about of the same size as the folding beds aforesaid; operates with weights, about six feet eight inches high, four feet broad and about twenty-five to twenty-seven inches deep

from front to rear at the base, which said Ringo Folding Bed was designed as so represented by him to entirely dispense with said weights and instead thereof (for the purpose of counteracting and balancing the weight of the folding part of said bedstead, bedspring, mattress, bedding, comforts, blankets, &c., usually used, together with a looking glass of any size desired,) two spiral or coiled springs are to be used, the upper end of each of said springs fastened into a cross beam and the lower end of each of said springs so connected with the back and rear end of an iron circular track that rollers secured to the bottom end of the folding part of said bed may, in unfolding and letting down of the bed, roll backward on the top side of said tracks (which are circular on the top side) and as they roll back are designed to increase the tension on said spiral springs so as to cause the increasing leverage and weight of the bed in being unfolded and let down to be equalized by the power of said springs, and also to have legs about one foot long to hold up the end of the bed when let down, the whole object and supposed purpose of said supposed improvement being to reduce the weight of the folding bed, so that it may be easily moved about upon four roller castors by the housekeeper with safety, decrease the cost of construction and lessen the cost and expenses of shipment and thus produce a market for the sale of said Ringo Folding Bed, so as to, in a large measure, take the place of other folding beds in common use and become a source of profit to the owner thereof.

2d. Defendant further represented that he had applied for a patent for his pretended invention in the patent office of the United States and that his application therefor was still pending and undetermined.

3d. Defendant intending to wrong, cheat and defraud the plaintiff out of his said stock of goods and property knowingly, fraudulently and deceitfully represented to plaintiff that the said

pretended invention was such an improvement on such other folding beds in common use, that all said weights used in them for balancing and overcoming the necessary leverage power (of the bed in letting down and closing up) could and would be dispensed with by the use of his springs, tracks and rollers, and that said springs, tracks and rollers would completely and fully do and perform all necessary work and supply the place of such weight above named, in counteracting the weight and leverage of the bed and furnishings above named as necessary and usual, while being let down and unfolded for use and in being folded up when not in use and that said bed should and would be built of substantially the same kind, quality and dimensions of lumber and materials as used in said other folding beds, and further represented that the "down-pull" of his said springs would equal the "down-pull" of the folding part of said bed when being opened for use, and further represented that this said bed would not when being so opened, which statement defendant did not know to be true, and in fact was not true, and might with perfect safety have any amount of weights added upon the bed part, even to the extent of one thousand pounds, and that it would not fall or tip over in use because, as he falsely and fraudulently stated, that the "down-pull" of his said springs in the rear would still counteract and overcome the down pull of the bed and weights in the front so it could not fall over."

These are the representations as alleged by plaintiff which induced him to enter into a written contract for the exchange of the plaintiff's said property for the said supposed invention of defendant and his bed, etc., on hand.

The plaintiff further alleges that all the said representations were false and known by defendant to be false at the time and defendant in truth and fact well knew at the time.

1st. That when said Ringo folding bed should be made

of the same size and materials of other beds with springs, rollers and tracks and without weights, that it would not and could not operate the ordinary weight of the front with any kind of beds and bedding therein, nor would it operate with as much weight as an ordinary bed must carry necessarily and when so built of the ordinary weight and dimensions, that it would fall and tip over in operation with or without any bed furnishings upon it, and

2d. That it was a dangerous and worthless deadfall and could not be safely used as a bed.

Fraud is the ground of the action and the representations as above recited, alleged to have been made before the written contract was entered into, are the means through which plaintiff was induced to make the contract.

If these representations were made by defendant to plaintiff and were, or any of them material to the contract afterwards made and were relied on by plaintiff as true, when, in fact, they were false, then the contract should not stand. But if defendant did not make such representations, or any of them, or notwithstanding defendant made them, the plaintiff relied on his own judgment or they were not material to the contract or were not false, then the contract should stand. Courts do not undertake to make contracts for parties; they make them for themselves, voluntarily impose their own burdens whether light or heavy to bear, and when freely and fairly assumed courts will leave them to the consequences of their own judgment, whether wisely or foolishly exercised. It is only where fraud, accident or mistake is present that the courts can undertake to cancel a contract and that upon the theory that the so-called contract is really no contract at all, the minds of the parties never having freely and fairly met upon the proposition.

Fraudulent representations in order to afford a ground for relief must be of facts which then existed or had existed

in distinction from an opinion, a promise, or an assumed future fact.

The first series of representations plaintiff charges the defendant made, it will be observed, consist in a description of the bed, together with an opinion of the defendant, as to the value and future popularity of the same, resulting from the substitution of springs for weights.

The second is an allegation of a pre-existing fact—that defendant had applied for a patent for his invention, and that his application was then pending and undetermined—and this, if false, was certainly material and should warrant the cancellation of the contract.

The third in the beginning states the opinion (for it can't be anything else) of the defendant that his invention was such an improvement on folding beds as would dispense with the use of weights, and next as to the materials and dimensions of the bed, and then that the "down pull" of the springs would equal the "down pull" of the folding part of the bed so that the bed should not tip when being operated.

This whole controversy really grows out of the alleged falsity of the fact that the "down pull" of the springs was equal to the "down pull" of the bed proper; all other allegations of misrepresentations are minor and hang upon this. If the effect of the springs is to maintain the equilibrium of the bed when in motion, then plaintiff in his own opinion and in that of all the expert witnesses, would have a very valuable invention, but if such is not the effect of the springs, then plaintiff would have a valueless property. As said before, the representations, outside of a warranty, upon which the law authorizes a party to rely in the making of a contract, must be of a fact either then existing or pre-existing, and not something to be done in the future, nor a mere opinion of inference as to the effect or result of a certain fact or facts then existing

or pre-existing; these facts must be, too, of a concrete character, as distinguished from a truth or principle. Here the facts: The springs, rollers, tracks, &c, are known to the plaintiff as well as the defendant; no fact is concealed from him as to the various parts and devices entering into the construction of the bed. Defendant tells him that the result of this combination of things will be that the bed will remain stationary while being operated. Plaintiff could investigate this as well as defendant. No door of knowledge is closed on him; he need not rely upon the mere opinion of defendant as to how the machinery will act, for it is but an opinion at best, but having all the facts before him, could draw a conclusion from them, as well as defendant. If he was not satisfied with his own opinion, and voluntarily chose to adopt defendant's as to the effect of these facts, it was his privilege so to do, but he ought not now to complain of it. The law does not relieve one from a contract because he was mistaken in his judgment upon open, patent facts. The very life of the trade is freedom of judgment. Plaintiff says he was imposed on by the false philosophy of defendant—that is, that the opinions of defendant as to the effect of the mechanical forces employed were erroneous, and that really is the ground of his complaint. The peculiar medico religious views of plaintiff, though occupying his thoughts to some extent, did not interfere with his good sense, in the general management of his business, and if it be a fact that he was inferior in mental vigor to defendant, that amounts to nothing, as mental inequality is a law of nature and goes the world over. If that were ground for setting aside a contract, none would stand. I think it is quite plain that the contract should not be set aside on account of the alleged fraudulent representation of defendant to plaintiff before the making of the contract.

It is also alleged by plaintiff that various matters and things were omitted from the contract fraudulently and wrong-

fully by defendant. Of this there was no evidence whatever—the contract was exactly as both parties desired and intended it should be.

Although total failure of consideration is not formally pleaded by plaintiff as the cause of action, yet in negativing the truth in defendant's representations he, among other things, alleges that "the bed was a dangerous and *worthless* deadfall and could not be safely used as a bed."

A total failure of consideration is a good and complete defense to an action outside of the defense of fraud, but mere inadequacy is not. In this case the evidence is conflicting as to the utility of the invention, but the evidence did not establish that it was a "worthless deadfall" or wholly valueless as a folding bed, and hence this defense is unavailable.

At the time of making the contract defendant's application for a patent was pending and undetermined. Plaintiff then became owner of an undivided half thereof and whether his legal title came directly from the United States to him or indirectly from the United States through defendant to him was an immaterial matter—the end to be accomplished was, the vesting of the right in him and this was done in a safe and more expeditious manner than having the title put in defendant after his ownership had ceased, and thus risk something to be done in the future—the formal assignment—which the death, disability, or refusal of defendant might delay and prevent, for a time, to the loss and expense of plaintiff. Besides it was the purpose and object of agreement between plaintiff and defendant to invest plaintiff then and there with one-half ownership in the invention, and it was the legal duty of the commissioner to issue the patent to the owners thereof at the time of issuance.

I have treated plaintiff's allegations of fraud as true in the main, and considered their legal sufficiency, but when we go

to the evidence for the facts accruing before and at the time of the trade, we do not find that they substantiate the allegations of plaintiff. Plaintiff was at the time of the trade conversant with folding beds—had handled them, of various kinds for many years—thoroughly appreciated, in common with others who were informed, the great value of a bed dispensing with weights and using springs—advised and suggested changes and supposed improvements to defendant during the working out of the idea—inspected the models at various times —proposed the trade first himself, and again a second time, and when defendant tells him he will trade, plaintiff advises with his friends, gets the opinion of an expert as to the value of the invention and throughout the whole negotiations is cautious and guarded. At the time of the trade plaintiff knew, or ought to have known, far more about folding beds than defendant, who was wholly ignorant of them, prior to the time he begun work on the invention, and it seems incredible to me with all his light and knowledge on the subject, that he would accept the opinion of the opposite party in interest and without question, and found a trade of thousands of dollars upon it. I can't think that he did.

In conclusion, I don't think either fraud in the contract or want of utility in the invention has been shown. The bill will be dismissed with judgment for defendant for costs.

E. M. HUGHES.

This opinion was adopted as that of the Supreme Court of the State. Reported Vol. 122, Mo. Reps., p. p. 322, 331. (Page 78 Abstract of Record.)

The evidence as to the utility invention was clear and satisfactory. The petition filed by the plaintiff in no way attacks the patent or the utility of the invention nor does it bring before the court any question involving the construction of letters patent or the law of patents or any statute of the United

States. Nor is the consideration of any question arising under the law of patents necessary to a determination of the case. No federal question is involved.

The contract between plaintiff and defendant was simply for the exchange of values, the defendant agreeing on his part to transfer his interest in the invention and procure a patent of the same and the plaintiff agreeing to convey his stock of merchandise. Defendant conveyed the interest in the invention, procured the patent and the title to the same was vested in plaintiff, the patent having been issued direct to him and his co-partner. Plaintiff conveyed his interest in the stock of merchandise to defendant, placed him in possession of it and he had been in possession some time when this suit to cancel was brought.

POINTS AND AUTHORITIES.

I.

The first contention of defendant is that the Supreme Court of the United States has no jurisdiction of this action, and to determine that resort must be had to Section 709, R. S. of U. S., 1878. This section is as follows:

"A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States and the decision is against their validity, or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the Constitution treaties or laws of the United States, and the decision is in favor of their validity, or where any title, right, privilege or immunity is claimed under the constitution, or any treaty or statute of or commission held or authority exercised under the United States, and the decision is against the title, right, privi-

lege or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error."

The matter of controversy in this case grows out of the contract for the exchange of the invention for the stock of merchandise. It is simply a contract in relation to an invention which by agreement was to be patented and which was patented. The controversy turns not upon the letters patent, but upon the contract concerning them only. No right of either party to the suit under the patent laws is directly in issue. The decision does not depend upon any law of Congress relating to patents. The dispute arises solely out of the contract stated in the bill and relates simply to the patented article. In the bill the thing stated is that plaintiff's consent was procured to the contract through fraud, asks for the cancellation of the contract and the restoration of the property. As the controversy arises upon the contract, not upon the letters-patent themselves nor any act of Congress concerning patents, but the rights of the parties depend altogether upon common law and equity principles this court can have no jurisdiction.

Wilson vs. Sanford, 10 Howard, 99.

Teas vs. Albright, 13 Fed. Rep., 406.

Albright vs. Teas, 106 U. S., 613.

Magwire vs. Tyler, 47 Mo., 155.

Neither the pleadings, evidence or judgment involve any federal question such as may be raised under Section 709. The decision is wholly upon the rights of the parties under the contract alleged in the bill.

The decision was adverse to the plaintiff regardless of the letters-patent or the law of patents. Notwithstanding a Federal question may be involved before this court would have

jurisdiction it must appear: first, that such question was raised and presented to the state court; second, that such question was decided by the state court, or that its decision was necessary to the judgment or decree rendered in the case, and third, the decision must have been against the right claimed or asserted by the plaintiff in error under the laws or authority of the United States.

Murdock vs. Mayor, 20 Wal., 590.

Plaintiff claimed nor asserted any right under the United States. All the rights he claimed or asserted grew out of his contract with Ringo and depended not upon any act of Congress or authority of the United States. This is simply a suit in equity to set aside a contract for alleged fraud. This is all that it appears by the bill filed and was determined alone upon principles of equity and nothing else is essential to a final determination of the case.

"It is well settled that when the Supreme Court of a state decides a federal question in rendering a judgment and also decides against the plaintiff in error upon an independent ground not involving a federal question and broad enough to maintain the judgment the writ of error will be dismissed without considering the federal question."

Hammond vs. Johnson, 142 U. S., 73.

The general rule is that to give this court jurisdiction of a writ of error to a state court "it must appear affirmatively not only that a federal question was presented for decision to the highest court of the state having jurisdiction but that its decision was necessary to the determination of the cause and that it was actually decided or that the judgment as rendered could not have been given without deciding it."

DeSaussure vs. Gillare, 127 U. S., 216.

If the case was decided independent of the federal question, then this court has not jurisdiction.

Foster's Federal Practice, Sec. 478, 2nd Ed.
Kent's Com. Vol. I, 6th Ed., 326, note b. and authorities there cited.
New Orleans Waterworks Co. vs. Louisana Sugar Refining Co., 125 U. S., 18.
Kreiger vs. Shelby R. Co., 125 U. S., 40.

Where a suit is brought on a contract or to annul it in which a patent is the subject matter, the case arises out of or on the contract and not under the patent laws.

Dale Tile Mfg. Co. vs. Hyatt, 125 U. S., Vol. 8, Supreme Ct. Rep., 756.

Felix vs. Scharnweber, 125 U. S., 8 Sup. Ct. Rep., 759.

II.

There was no fraud on ths part of defendant.

Jolliffe vs. Collins, 21 Mo., 338.
Finley vs. Bryson, 84 Mo., 664.
Parker vs. Marquis, 64 Mo., 38.
Nauman vs. Oberly, 90 Mo., 666.

(a.) Before there can be a fraud there must be a misrepresentation as to matter of fact, not of law; (2) it must be a fact as distinguished from a mere expression of opinion; (3) it must be of a fact at the time or previously existing and not a mere promise for the future; (4) it must be relied upon by the person to whom it was made.

Am. Eng. Ency. of law, Vol. 8,638-639.

(b.) Representations as to value and utility of machines are matters of opinion.

Neidfer vs. Chastian, 71 Ind., 636; 36 Am., 198.

(c.) But in this case the plaintiff was equally well acquainted with the invention with defendant and had every opportunity to judge of the invention and did examine it and submit it to experts. Under this state of fact there can be not the slightest suspicion of fraud in an ordinarily constituted mind.

The doctrine of this court found in Jolliffe vs. Collins supra is decisive of this case.

See also Hess vs. Young, 59 Ind., 379.

III.

Under the contract between the parties the defendant conveyed his half interest in the invention and agreed to get the same patented. The consideration for this on the part of plaintiff was the stock of goods that he conveyed to defendant. Defendant procured the patent on the invention and the same was issued to plaintiff by the Commissioner of Patents—everything to be performed on the part of defendant was fully performed by him.

(a.) The procuring of the patent is a sufficient consideration.

Bishop on Contracts, Sec. 73.

Harmon vs. Bird, 22 Wend., 113.

(b) Novelty and utility in the invention are presumed from the issuing of the patent.

Am. and Eng. Ency. of Law, Vol. 18, p. 51, note 2 and authorities cited.

(c) The evidence in this case shows that the invention is useful. See the evidence of Mrs. J. C. Ringo, B. Ringo, defendant and a number of others on part of defendant. This, in addition to the fact that defendant conveyed the invention to

plaintiff and procured the patent as agreed makes the consideration doubly complete.

Jolliffe vs. Collins, supra.

(d.) An inventor has a property in the invention independent of the letters patent.

Tabor vs. Hoffman, 118 N. Y., 30.

16 Am. St. Rep. 740 and authorities there cited; see note to this decision.

(e.) A court of equity would have compelled specific performance of the contract at the instance of defendant.

Somerby vs. Buntin, 118 Mass. 279; 19 Am. Rep., 459.

The judgment should be affirmed.

Respectfully submitted,

GEO. ROBERTSON,

For Defendants in Error.